रजिस्ट्री सं. डी. एल. (एन) 04/0007/2003–05 REGD. NO. D. L. (N) 04/0007/2003—05

भारत का राजपत्र
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WEEKLY

सं. 43] नई दिल्ली, अक्तूबर 20—अक्तूबर 26 2013, शनिवार/आश्विन 28—कार्तिक 4, 1935
No. 43] NEW DELHI, OCTOBER 20—OCTOBER 26, 2013, SATURDAY/ASVINA 28—KARTIKA 4, 1935

भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India (Other than the Ministry of Defence)

वाणिज्य और उद्योग मंत्रालय

संकल्प

नई दिल्ली, 9 अक्तूबर, 2013

का॰आ॰ 2301.—नमक के विनिर्माण के लिए पट्टे पर दी गई नमक आयुक्त के प्रशासनिक नियंत्रण वाली केंद्र सरकार की भूमि के पट्टे के नवीनीकरण संबंधी नीति पर विचार किया गया तथा सरकार के संकल्प सं॰ 18(4)59-नमक (भाग-VIII), दिनांक 7/12/1961 में आंशिक संशोधन करते हुए तथा सरकार के संकल्प सं॰ 16(23)/63-नमक, दिनांक 19/12/1969 के तहत इसे और स्पष्ट करते हुए, राष्ट्रपति निम्नलिखित का अनुमोदन प्रदान करते हैं:—

(क) केंद्र सरकार की भूमि निविदा आमंत्रित करके 20 वर्षों की अवधि के लिए नमक विनिर्माण हेतु पट्टे पर दी जाएगी।

(ख) पट्टे का नवीनीकरण नहीं किया जाएगा। नमक विनिर्माण के लिए भूमि प्रदान करने हेतु नई निविदा आमंत्रित की जाएगी। मौजूदा पट्टे के समाप्त होने पर वर्तमान पट्टेदार नए निविदाकर्ताओं के साथ निविदा में भाग ले सकता है।

[सं॰ 04014/1/2012-नमक]
संजीवनी ताम्हणे, उप सचिव

MINISTRY OF COMMERCE AND INDUSTRY

RESOLUTION

New Delhi, the 9th October, 2013

S.O. 2301.—The policy on the renewal of leases of Central Government land under the administrative control of Salt Commissioner leased out for manufacture of salt was considered and the President, in partial modification of the Government Resolution No. 18(4)/59-Salt (Pt. VIII) dated 7th December, 1961 and further clarified under Government Resolution No. 16(23)/63-Salt dated 19th December, 1969, is pleased to approve that:—

(a) Central Government land will be leased out for salt manufacture for a period of 20 years by invitation of tender.

(b) No renewal of lease will be done. Fresh tender for the assignment of land for salt manufacture will be called. The present lessee on expiry of the existing lease may participate along with fresh aspirants.

[No. 04014/1/2012-Salt]
SANJIVANI TAMHANE, Dy. Secy.

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

(उपभोक्ता मामले विभाग)

(भारतीय मानक ब्यूरो)

नई दिल्ली, 15 अक्तूबर, 2013

का॰आ॰ 2302.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उपनियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गए हैं:-

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक(कों) की संख्या, वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
1	IS 1515 : 2013 मधुमक्खी पेटिका – विशिष्टि (चौथा पुनरीक्षण)	IS 1515:1988	31 अगस्त, 2013
2	IS 1735 (Part 2): 2013 मधुमक्खी पेटिका का स्टैंड – विशिष्टि भाग 2 स्थिर प्रकार (दूसरा पुनरीक्षण)	IS 1735 (Part 2) : 1978	31 अगस्त, 2013
3	IS 14133: 2013 शहद निकालने वाले व्यक्ति का किट – विशिष्टि (पहला पुनरीक्षण)	IS 14133 : 1994	31 अगस्त, 2013
4	IS 5960 (भाग 11) : 2013 मांस एवं मांस उत्पाद – परीक्षण पद्धति भाग 11 ग्लूकोनो–डेल्टा–लेक्टोन की मात्रा ज्ञात करना (पहला पुनरीक्षण)	IS 5960 (भाग 11) : 1988	30 सितंबर, 2013

इन मानकों की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली–110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चेन्नई, मुम्बई, चण्डीगढ़ तथा शाखा कायालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा कोचि में बिक्री हेतु उपलब्ध हैं।

[संदर्भ एफएडी/जी–128]

कुमार अनिल, वैज्ञानिक 'एफ' एवं प्रमुख (खाद्य एवं कृषि)

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)

(BUREAU OF INDIAN STANDARDS)

New Delhi, the 15th October, 2013

S.O. 2302.—In pursuance of Clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each:

SCHEDULE

Sl. No.	No. and Year of the Indian Standard	No. and Year of Indian Standards, if any, Superseded by the New Indian Standard	Date of Establishment
1.	IS 1515 : 2013 Beehives-Specification (Fourth revision)	IS 1515 :1998	31 August, 2013
2.	IS 1735 (Part 2): 2013 Beehives stand-Specification (Part 2 Fixed type (Second revision)	IS 1735 (Part 2) : 1978	31 August, 2013
3.	IS 14133 : 2013 Beekeeper's Kit-Specification (First revision)	IS 14133 : 1994	31 August, 2013
4.	IS 5960 (Part 11) : 2013 Meat and Meat Products- Methods of Test Part 11 Determination of glucono-delta-lactone content (First revision)	IS 5960 (Part 11) : 1988	30 September, 1013

Copy of these standards are available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai, and also Branch Offices: Ahemdabad, Bangalore, Bhopal, Bhubhneshwar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune and Kochi.

[Ref. FAD/G-128]
KUMAR ANIL, Scientist 'F' and Head (Food & Agri.)

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 23 सितम्बर, 2013

का॰आ॰ 2303.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स इंडियन आयल कार्पोरेशन लि॰, दिल्ली के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं॰ 1, दिल्ली के पंचाट (संदर्भ संख्या 50, 55, 56/2013) प्रकाशित करती है जो केन्द्रीय सरकार को 20/9/2013 को प्राप्त हुआ था।

[सं॰ एल-30011/90/2002-आई आर (एम)]
जोहन तोपनो, अवर सचिव

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 23rd September, 2013

S.O. 2303.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 50, 55, 56/2013) of the Central Government Industrial Tribunal/ Labour Court No. 1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the Management of M/s. Indian Oil Corporation Ltd. Delhi and their workman, which was received by the Central Government on 20/9/2013.

[No. L-30011/90/2002-IR(M)]
JOHN TOPNO, Under Secy.

ANNEXURE

BEFORE DR. R.K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, KARKARDOOMA COURTS COMPLEX, DELHI

I.D. No. 55/2013

Shri Hari Narayan,
S/o Late Shri Brijpal Verma,
Through New Delhi General Mazdoor Union,
R/o B-89, Gulmohar Park,
New Delhi-110 049 .....Workman

Versus

The Chairman and Managing Director,
Indian Oil Corporation Ltd.
Scope Complex, Core 2,
Lodhi Road,
New Delhi

....Management

AWARD

Indian Oil Corporation Ltd. (hereinafter referred to as the Corporation) operates seven refineries located at Digboi, Guwahati, Barauni, Gujarat, Haldia, Mathura and Panipat. Corporation carries out distribution of various essential petroleum products to general public, industries, railways and defence services through a vast marketing network and pipelines situated at various locations in the

country. To ensure production and supply of petroleum products, the Corporation employs various personnel. Recruitment is made by the Corporation according to recruitment rules applicable to it.

2. Corporation awarded some work to a contractor, who employed certain persons to carry out the job so awarded to him. Persons employed by the contractor preferred a writ petition before High Court of Delhi bearing CWP No. 7377 of 99, seeking their regularization in services of the Corporation. The said writ petition was dismissed *vide* order dated 13.09.2011. Later patent appeal was also dismissed *vide* order dated 19.10.2001. Thereafter, 18 persons approached the Conciliation Officer, seeking regularization of their job with the Corporation. When conciliation proceedings ended into a failure, the appropriate Government referred the dispute to this Tribunal for adjudication *vide* order No. L-3011/90/2002-IR(M), New Delhi dated 17.03.2003 with the following terms:

> "Whether the action of the management of Refinery Division, HQ, IOCL, New Delhi is not regularizing the services of 18 workmen (as per the list attached) from the date of initial appointment is just, fair and legal? If not, what relief the 18 workmen are entitled to and from which date?"

3. Claim statement was filed on behalf of the claimant wherein it was asserted that they were engaged by the Corporation on different dates since Marcy 1980 till October, 1989. They rendered continuous service to the Corporation. They claim for reinstatement in the service of the Corporation since the date of their initial appointment(s). Their claim was resisted in the written statement, wherein the Corporation pleads that there was no relationship of employer and employee between the parties and as such, claimants are not entitled to any relief of regularization of their service.

4. During the course of adjudication of the said dispute, present complaint has been filed under section 33A of the Industrial Disputes Act, 1947 (in short the Act) alleging therein that services of the claimant were dispensed with by the Corporation with effect from 31.01.2006. Complaint sought indulgence of this Tribunal for his reinstatement in the service since the date of his termination, effected by the management. In the written statement, Corporation takes the very plea taken in the industrial dispute and agitates that claimant was not their employee. It has been asserted that there was no action on the part of the Corporation to terminate services of the claimant. The Corporation presents that the complaint, under reference, may be dismissed, being devoid of merits.

5. On pleadings of the parties following issues were settled:

(1) Whether claimant is a workman concerned in the dispute referred for adjudication on 17.03.2003 to this Tribunal?

(2) Whether management violated provisions of section 33 of the Industrial Disputes Act, 1947?

(3) Whether claimant is entitled to relief of reinstatement in service?

6. No evidence was adduced on behalf of the claimant, despite grant of more than reasonable opportunities. When claimant failed to adduce evidence, the Corporation opted not to adduce any evidence in the matter.

7. Arguments were heard at the bar. Shri B.K. Prasad, authorized representative, raised submission on behalf of the claimant. Shri Vinay Sabharwal, authorized representative, presented facts on behalf of the Corporation. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy, are as follows:—

Issue No. 1

8. For the purpose of section 33 of the Act, the workman should not only be a workman within the meaning of section 2(s) of the Act but should also be 'concerned in the dispute pending before the Tribunal.' Workman 'concerned in the industrial dispute' obviously constitute group which might be less comprehensive in its scope than all the workmen employed in that industry or even in one establishment of that industry. The word 'concerned, means 'interested, engaged, having a connection with' or interested/involved'. In order to substantiate the claim of contravention of section 33, the workman has to show that he was 'concerned' with the pending dispute in any of the manners envisaged by the expression. It is necessary for the workman who wants to come within the category of workman concerned in such dispute to prove that he is interested in or has connection with the dispute already pending for determination.

9. In the dispute registered as ID No. 32/2003, appropriate Government forwarded an issue relating to regularization of services of 18 workmen with Indian Oil Corporation Ltd. List of those 18 workmen was annexed with schedule of reference. Name of the claimant appears at Sl. No. 12 of the said list. Thus, it is evident that the claimant was one of the workmen, who had raised the dispute, which was pending adjudication when his services were allegedly dispensed with. Taking cognizance of these facts, it is concluded that the claimant was concerned in the dispute pending adjudication before this Tribunal. The issue is, therefore, answered in favour of the claimant and against the Corporation.

Issue No. 2

10. Section 33 of the Act bars alteration in conditions of service "prejudicial" to the workman concerned in the dispute and punishment of discharge or dismissal when

either is connected with pendent lite industrial dispute "save with the permission of the authorities before which the proceedings is pending" or where the discharge or dismissal is for any misconduct not connected with the pendent lite industrial dispute without the "approval of such authority". Prohibition contained in Section 33 of the Act is two fold. On one hand, they are designed to protect the workman concerned during the course of industrial conciliation, arbitration and adjudication, against employers' harassment and victimization, on account of their having raised the industrial dispute or their continuing the pending proceedings and on the other, they seek to maintain status quo by prescribing management conduct which may give rise to "fresh dispute" which further exacerbate the already strained relations between employer and the workman. Where industrial disputes are pendent lite before an authority mentioned in the section, it was thought necessary that such disputes should be conciliated or adjudicated upon by the authority in a peaceful atmosphere, undisturbed by any subsequent causes for bitterness or unpleasantness. To achieve this object, a ban has been imposed upon the employer exercising his common law, statutory or contractual right to terminate the services of his employees according to contract or the provision of law governing such service. The ordinary right of the employer to alter the terms of his employees' services to their prejudice or to terminate their services under the general law governing contract of employment, has been banned subject to certain conditions. This ban, therefore, is designed to restrict the interference of the general rights and liabilities of the parties under the ordinary law within the limits truly necessary for accomplishing the object of those provisions. Anxiety to know about ban on the right of the employer, persuades me to reproduce the provisions of Section 33 of the Act thus:

> "33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.—(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before an arbitrator or a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall,—
>
> (a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or
>
> (b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workman concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.
>
> (2) During the pendancy of any such proceeding in respect of an industrial dispute, the employer may, in accordance with standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman—
>
> (a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or
>
> (b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman:—
>
> Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an applicable has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.
>
> (3) Notwithstanding anything contained in sub-section (2), no employer shall, during the pendency of any such proceeding in respect of an industrial dispute, take any action against any protected workman concerned in such dispute—
>
> (a) by altering to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceeding; or
>
> (b) by discharging or punishing, whether any dismissal or otherwise, such protected workman,
>
> Save with the express permission in writing of the authority before which the proceeding is pending.
>
> *Explanation*.— For the purposes of this sub-section, a "protected workman", in relation to an establishment, means a workman who, being a member of the executive or other office bearer of a registered trade union connected with the establishment, is recognized as such in accordance with rules made in this behalf.
>
> (4) In every establishment, the number of workmen to be recognized as protected workmen for the purposes of sub-section (3) shall be one per cent of the total number of workmen employed therein subject to a minimum number of five protected workmen and a maximum number of one hundred protected workmen and for the aforesaid purpose, the appropriate Government may make rules providing for the distribution of such protected workmen among various trade unions, if any, connected with the establishment and the manner in which the workmen may be chosen and recognized as protected workmen.

(5) Where an employer makes an application to a conciliation officer, Board, an arbitrator, a Labour Court, Tribunal or National Tribunal under the proviso to sub-section (2) for approval of the action taken by him, the authority concerned shall, without delay, hear such application and pass, within a period of three months from the date of receipt of such application, such order in relation thereto as it deems fit.

Provided that where any such authority considers it necessary or expedient so to do, it may, for reasons to be recorded in writing, extend such period by such further period as it may think fit.

Provided further that no proceedings before any such authority shall lapse merely on the ground that any period specified in this sub-section had expired without such proceedings being completed.

11. As noted above sub-sections (1) and (2) are designed for different purposes since sub-section (1) applies to the proposition when the employer wants to alter service conditions of the workman to his prejudice in regard to any matter connected with the dispute or for any misconduct connected with the dispute, in that situation he is obliged to seek prior permission in writing of the authority before whom the dispute is pending and in a case where the employer wants to alter service conditions of a workman in regard to a matter not connected with the dispute or for any misconduct not connected with the dispute, in that situation he is obliged to seek approval of the order under sub-section (2) of the aforesaid section. When an employer violates the provisions of sub-section (1) or sub-section (2) of section 33 of the Act, an instant remedy is provided to the workman by the provisions of section 33A of the Act. In other words, where an employer has contravened the provisions of section 33, the aggrieved workman has been given the option to make a complaint in writing, to the authority before which an industrial dispute is pending, with which the aggrieved workman is concerned. The complaint of such contravention can be made not to the adjudicating authorities, but to the conciliatory authority also. If a complaint is made to a conciliatory authority, viz. a Conciliation Officer or a Board of Conciliation, clause (a) of section 33 A of the act authorizes a Conciliation Officer or the Board to take such complaint into account in bringing about a settlement of the complained dispute. The Conciliation Officer or the Board is not empowered to adjudicate upon the dispute, which is the area of adjudicatory authorities. When a complaint is made to adjudicatory authority viz. Arbitrator, Labour Court, Tribunal or National Tribunal, it will adjudicate upon the dispute as if it is a dispute referred to or pending before it.

12. To attract the provisions of section 33A of the Act, following conditions precedent are to be satisfied.

1. that there should have been a contravention by the management of the provisions of section 33 of the Act,

2. that the contravention should have been during the pendancy of the proceedings before the conciliatory authorities or Labour Court, Tribunal or National Tribunal, as the case may be.

3. that the complainant should have been aggrieved by the contravention, and

4. that the application should have been made to the Labour Court, Tribunal or the National Tribunal in which original proceedings are pending.

13. It is obligatory on the claimant to establish on record that the Corporation has contravened provisions of section 33 of the Act, during pendancy of adjudication proceedings in respect of the dispute registered as ID No. 32/2003. In order to discharge that onus, claimant was duty bound to adduce evidence to establish that his services were dispensed with by the Corporation. Instead of adducing any evidence, the claimant opted not to enter the withness box. Therefore, there remains complete vacuum of evidence to the effect as to whether services of the claimant were dispensed with during pendancy of the aforesaid industrial dispute before the Tribunal. Not even an iota of evidence is over the record to conclude that the Corporation has violated provisions of section 33 of the Act . Onus was on the claimant to establish contravention of the provisions of section 33 of the Act, which has not been discharged by him. In absence of material evidence, findings cannot be recorded to hte effect that the Corporation dispensed with the services of the claimant and contravened provisions of section 33 of the Act. For desideratum of evidence, it is concluded that the claimant has miserably failed to establish that the Corporation has contravened provisions of section 33 of the Act, during pendency of adjudication proceedings of the dispute referred above. Resultantly, the issue is answered against the claimant and in favour of the Corporation.

Issue No. 3

14. In view of the findings on issue No. 2, it is apparent that the claimant is not entitled to any relief. Complaint, raised by the claimant under section 33A of the Act, cannot be answered in his favour. He is not entitled to any relief. Resultantly, his complaint is dismissed. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dr. R.K YADAV, Presiding Officer

Dated: September 13, 2013

ANNEXURE

BEFORE DR. R.K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1. KARKARDOOMA COURTS COMPLEX, DELHI

I.D. No. 56/2013

Shri Devendra Singh Negi,
S/o late Shri Nandan Singh,
Through New Delhi General Mazdoor Union,
R/o B-89, Gulmohar Park,.
New Delhi-110 049

....Workman

Versus

The Chairman and Managing Director,
Indian Oil Corporation Ltd.
Scope Complex, Core 2,
Lodhi Road,
New Delhi

.....Management

AWARD

Indian Oil Corporation Ltd. (hereinafter referred to as the Corporation) operates seven refineries located at Digboi, Guwahati, Barauni, Gujarat, Haldia, Mathura and Panipat. Corporation carries out distribution of various essential petroleum products to general public, industries, railways and defence services through a vast marketing network and pipelines situated at various locations in the country. To ensure production and supply of petroleum products, the Corporation employs various personnel. Recruitment is made by the Corporation according to recruitment rules applicable to it.

2. Corporation awarded some work to a contractor, who employed certain persons to carry out the job so awarded to him. Persons employed by the contractor preferred a writ petition before High Court of Delhi bearing CWP NO. 7377 of 99, seeking their regularization in services of the Corporation. The said writ petition was dismissed vide order dated 19.10.2001. Thereafter, 18 persons approached the Conciliation Officer, seeking regularization of their job with the Corporation. When conciliation proceedings ended into a failure, the appropriate Government referred the dispute to this Tribunal for adjudication vide order No.L-30011/90/2002-IR(M), New Delhi dated 17.03.2003 with the following terms:

> "Whether the action of the management of Refinery Division, HQ, IOCL, New Delhi in not regularizing the services of 18 workmen (as per the list attached) from the date of initial appointment is just, fair and legal? If not, what relief the 18 workmen are entitled to and from which date?"

3. Claim statement was filed on behalf of the claimant wherein it was asserted that they were engaged by the Corporation on different dates since Marcy 1980 till October, 1989. They rendered continuous service to the Corporation. They claim for reinstatement in the service of the Corporation since the date of their initial appointment(s). Their claim was resisted in the written statement, wherein the Corporation pleads that there was no relationship of employer and employee between the parties and as such, claimants are not entitled to any relief of regularization of their service.

4. During the course of adjudication of the said dispute, present complaint has been filed under section 33A of the industrial Disputes Act, 1947 (in short the Act) alleging therein that services of the claimant were dispensed with by the Corporation with effect from 31.01.2006. Complaint sought indulgence of this Tribunal for his reinstatement in the service since the date of his termination, effected by the management. In the written statement, Corporation takes the very plea taken in the industrial dispute and agitates that claimant was not their employee. It has been asserted that there was no action on the part of the Corporation to terminate services of the claimant. The Corporation presents that the complaint, under reference, may be dismissed, being devoid of merits.

5. On pleadings of the parties following issues were settled:

(1) Whether claimant is a workman concerned in the dispute referred for adjudication on 17.03.2003 to this Tribunal?

(2) Whether management violated provisions of section 33 of the Industrial Disputes Act, 1947?

(3) Whether claimant is entitled to relief of reinstatement in service?

6. No evidence was adduced on behalf of the claimant, despite grant of more than reasonable opportunities. When claimant failed to adduce evidence, the Corporation opted not to adduce any evidence in the matter.

7. Arguments were heard at the bar. Shri B.K. Prasad, authorized representative, raised submission on behalf of the claimant. Shri Vinay Sabharwal, authorized representative, presented facts on behalf of the Corporation. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy, are as follows:—

Issue No. 1

8. For the purpose of section 33 of the Act, the workman should not only be a workman within the meaning of section 2(s) of the Act but should also be 'concerned in the dispute pending before the Tribunal'. Workmen 'concerned in the industrial dispute' obviously constitute group which might be less comprehensive in its scope

than all the workmen employed in that industry or even in one establishment of that industry. The word 'concerned, means interested, engaged, having a connection with' or interested/involved'. In order to substantiate the claim of contravention of section 33, the workman has to show that he was 'concerned' with the pending dispute in any of the manners envisaged by the expression. It is necessary for the workman who wants to come within the category of workman concerned in such dispute to prove that he is interested in or has connection with the dispute already pending for determination.

9. In the dispute registered as ID No.32/2003, appropriate Government forwarded an issue relating to regularization of services of 18 workmen with Indian Oil Corporation Ltd. List of those 18 workmen was annexed with schedule of reference. Name of the claimant appears at SI.No.3 of the said list. Thus, it is evident that the claimant was one of the workmen, who had raised the dispute, which was pending adjudication when his services were allegedly dispensed with. Taking cognizance of these facts, it is concluded that the claimant was concerned in the dispute pending adjudication before this Tribunal. The issue is, therefore, answered in favour of the claimant and against the Corporation.

Issue No. 2

10. Section 33 of the Act bars alteration in conditions of service "prejudicial" to the workman concerned in the dispute and punishment of discharge or dismissal when either is connected with pendente lite industrial dispute "save with the permission of the authorities before which the proceedings is pending" or where the discharge or dismissal is for any misconduct not connected with the pendente lite industrial dispute without the "approval of such authority". Prohibition contained in section 33 of the Act is two fold. On one hand, they are designed to protect the workman concerned during the course of industrial conciliation, arbitration and adjudication, against employers' harassment and victimization, on account of their having raised the industrial dispute or their continuing the pending proceedings and on the other, they seek to maintain status quo by prescribing management conduct which may give rise to "fresh dispute" which further exacerbate the already strained relations between employer and the workman. Where industrial disputes are pendente lite before an authority mentioned in the section, it was thought necessary that such disputes should be conciliated or adjudicated upon by the authority in a peaceful atmosphere, undisturbed by any subsequent causes for bitterness or unpleasantness. To achieve this object, a ban has been imposed upon the employer exercising his common law, statutory or contractual right to terminate the services of his employees according to contract or the provisions of law governing such service. The ordinary right of the employer to alter the terms of his employees' services to their prejudice or to terminate their services under the general law governing contract of employment, has been banned subject to certain conditions. This bar, therefore, is designed to restrict the interference of the general rights and liabilities of the parties under the ordinary law within the limits truly necessary for accomplishing the object of those provisions Anxiety to know about ban on the right of the employer, persuades me to reproduce the provisions of section 33 of the Act thus:

> "33. Conditions of service, etc., to remain unchanged under certain circumstances during pendancy of proceedings. —(1) During the pendancy of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before an arbitrator or a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall,—
>
> (a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or
>
> (b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workman concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.
>
> (2) During the pendancy of any such proceeding in respect of an industrial dispute, the employer may, in accordance with standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman—
>
> (a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding ; or
>
> (b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman:
>
> Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.
>
> (3) Notwithstanding anything contained in sub-section (2), no employer shall, during the pendancy of any such proceeding in respect of an industrial dispute, take any action against any protected workman concerned in such dispute —
>
> (a) by altering, to the prejudice of such protected workman, the conditions of service applicable

to him immediately before the commencement of such proceeding; or

(b) by discharging or punishing, whether any dismissal or otherwise, such protected workman,

save with the express permission in writing of the authority before which the proceeding is pending.

Explanation. — For the purposes of this sub-section, a "protected workman", in relation to an establishment, means a workman who, being a member of the executive or other office bearer of a registered trade union connected with the establishment, is recognized as such in accordance with rules made in this behalf.

(4) In every establishment, the number of workmen to be recognized as protected workmen for the purposes of sub-section (3) shall be one per cent of the total number of workmen employed therein subject to a minimum number of five protected workmen and a maximum number of one hundred protected workmen and for the aforesaid purpose, the appropriate Government may make rules providing for the distribution of such protected workmen among various trade unions, if any, connected with the establishment and the manner in which the workmen may be chosen and recognized as protected workmen.

(5) Where an employer makes an application to a conciliation officer, Board, an arbitrator, a Labour Court, Tribunal or National Tribunal under the proviso to sub-section (2) for approval of the action taken by him, the authority concerned shall, without delay, hear such application and pass, within a period of three months from the date of receipt of such application, such order in relation thereto as it deems fit.

Provided that where any such authority considers it necessary or expedient so to do, it may, for reasons to be recorded in writing, extend such period by such further period as it may think fit.

Provided further that no proceedings before any such authority shall lapse merely on the ground that any period specified in this sub-section had expired without such proceedings being completed.

11. As noted above sub-sections (1) and (2) are designed for different purposes since sub-section (1) applies to the proposition when the employer wants to alter service conditions of the workman to his prejudice in regard to any matter connected with the dispute or for any misconduct connected with the dispute, in that situation he is obliged to seek prior permission in writing of the authority before whom the dispute is pending and in a case where the employer wants to alter service conditions of a workman in regard to a matter not connected with the dispute or for any misconduct not connected with the dispute, in that situation he is obliged to seek approval of the order under sub-section (2) of the aforesaid section. When an employer violates the provisions of sub-section (1) or sub-section (2) of section 33 of the Act, an instant remedy is provided to the workman by the provisions of section 33A of the Act. In other words, where an employer has contravened the provisions of section 33, the aggrieved workman has been giver the option to make a complaint in writing, to the authority before which an industrial dispute is pending, with which the aggrieved workman is concerned. The complaint of such contravention can be made not to the adjudicating authorities, but to the conciliatory authority also. If a complaint is made to a conciliatory authority, viz. a Conciliation Officer or a Board of Conciliation, clause (a) of section 33 A of the act authorizes a Conciliation Officer or the Board to take such complaint into account in bringing about a settlement of the complained dispute. The Conciliation Officer or the Board is not empowered to adjudicate upon the dispute, which is the area of adjudicatory authorities. When a complaint is made to adjudicatory authority viz. Arbitrator, Labour Court, Tribunal or National Tribunal, it will adjudicate upon the dispute as if it is a dispute referred to or pending before it.

12. To attract the provisions of section 33A of the Act, following conditions precedent are to be satisfied.

1. `that there should have been a contravention by the management of the provisions of section 33 of the Act,

2. that the contravention should have been during the pendancy of the proceedings before the conciliatory authorities or Labour Court, Tribunal or National Tribunal , as the case may be.

3. that the complainant should have been aggrieved by the contravention, and

4. that the application should have been made to the Labour Court, Tribunal or the National Tribunal in which original proceedings are pending.

13. It is obligatory on the claimant to establish on record that the Corporation has contravened provisions of section 33 of the Act, during pendancy of adjudication proceedings in respect of the dispute registered as ID No.32/2003. In order to discharge that onus, claimant was duty bound to adduce evidence to establish that his services were dispensed with by the Corporation. Instead of adducing any evidence, the claimant opted not to enter the witness box. Therefore, there remains complete vacuum of evidence to the effect as to whether services of the

claimant were dispensed with during pendancy of the aforesaid industrial dispute before the Tribunal. Not even an iota of evidence is over the record to conclude that the Corporation has violated provisions of section 33 of the Act. Onus was on the claimant to establish contravention of the provisions of section 33 of the Act, which has not been discharged by him. In the absence of material evidence, findings cannot be recorded to the effect that the Corporation dispensed with the services of the claimant and contravened provisions of srction 33 of the Act. For desideratum of evidence, it is concluded that the claimant has miserably failed to establish that the Corporation has contravened provisions of section 33 of the Act, during pendancy of adjudication proceedings of the dispute referred above. Resultantly, the issue is answered against the claimant and in favour of the Corporation.

Issue No. 3

14. In view of the findings on issue No.2, it is apparent that the claimant is not entitled to any relief. Complaint, raised by the claimant under section 33A of the Act, cannot be answered in his favour. He is not entitled to any relief. Resultantly, his complaint is dismissed. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dr. R. K. YADAV, Presiding Officer

Dated: September 13, 2013

ANNEXURE

BEFORE DR. R.K. YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, KARKARDOOMA COURTS COMPLEX, DELHI

I.D. No. 50/2013

Shri Prakash Singh,
S/o Shri Ranjit Singh,
Through New Delhi General Mazdoor Union,
R/o B-89, Gulmohar Park,
New Delhi 110 049 ....Workman

Versus

The Chairman and Managing Director,
Indian Oil Corporation Ltd.,
Scope Complex, Core 2
Lodhi Road,
New Delhi

....Management

AWARD

Indian Oil Corporation Ltd. (hereinafter referred to as the Corporation) operates seven refineries located at Digboi, Guwahati, Barauni, Gujarat, Haldia, Mathura and Panipat. Corporation carries out distribution of various essential petroleum products to general public, industries, railways and defence services through a vast marketing network and pipelines situated at various locations in the country. To ensure production and supply of petroleum products, the Corporation employs various personnel. Recruitment is made by the Corporation according to recruitment rules applicable to it.

2. Corporation awarded some work to a contractor, who employed certain persons to carry out the job so awarded to him. Persons employed by the contractor preferred a writ petition before High court of Delhi bearing CWP No.7377 of 99, seeking their regularization in services of the Corporation. The said writ petition was dismissed *vide* order dated 13.09.2001. Later patent appeal was also dismissed *vide* order dated 19.10.2001. Thereafter, 18 persons approached the Conciliation Officer, seeking regularization of their job with the Corporation. When conciliation proceedings ended into a failure, the appropriate Government referred the dispute to this Tribunal for adjudication *vide* order No.L-30011/90/2002-IR(M), New Delhi dated 17.03.2003 with the following terms:

> "Whether the action of the management of Refinery Division, HQ, IOCL, New Delhi in not regularizing the services of 18 workmen (as per the list attached) from the date of initial appointment is just, fair and legal? If not, what relief the 18 workmen are entitled to and from which date?"

3. Claim statement was filed on behalf of the claimant wherein it was asserted that they were engaged by the Corporation on different dates since March 1980 till October 1989. They rendered continuous service to the Corporation. They claim for reinstatement in the service of the Corporation since the date of their initial appointment(s). Their claim was resisted in the written statement, wherein the Corporation pleads that there was no relationship of employer and employee between the parties and as such, claimants are not entitled to any relief of regularization of their service.

4. During the course of adjudication of the said dispute, present complaint has been filed under section 33A of the Industrial Disputes Act, 1947(in short the Act) alleging therein that services of the claimant were dispensed with by the Corporation with effect from 31.01.2006.

Complaint sought indulgence of this Tribunal for his reinstatement in the service since the date of his termination, effected by the management. In the written statement, Corporation takes the very plea taken in the industrial dispute and agitates that claimant was not their employee. It has been asserted that there was no action on the part of the Corporation to terminate services of the claimant. The Corporation presents that the complaint, under reference, may be dismissed, being devoid of merits.

5. On pleadings of the parties following issues were settled:

(1) Whether claimant is a workman concerned in the dispute referred for adjudication on 17.03.2003 to this Tribunal?

(2) Whether management violated provisions of section 33 of the Industrial Disputes Act, 1947?

(3) Whether claimant is entitled to relief of reinstatement in service?

6. No evidence was adduced on behalf of the claimant, despite grant of more than reasonable opportunities. When claimant failed to adduce evidence, the Corporation opted not to adduce any evidence in the matter.

7. Arguments were heard at the bar. Shri B.K. Prasad, authorized representative, raised submission on behalf of the claimant. Shri Vinay Sabharwal, authorized representative, presented facts on behalf of the Corporation. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy, are as follows:—

Issue No. 1

8. For the purpose of section 33 of the Act, the workman should not only be a workman within the meaning of section 2(s) of the Act but should also be 'concerned in the dispute pending before the Tribunal'. Workmen 'concerned in the industrial dispute' obviously constitute group which might be less comprehensive in its scope than all the workmen employed in that industry or even in one establishment of that industry. The word 'concerned, means 'interested, engaged, having a connection with' or interested/involved'. In order to substantiate the claim of contravention of section 33, the workman has to show that he was 'concerned' with the pending dispute in any of the manners envisaged by the expression. It is necessary for the workman who wants to come within the category of workman concerned in such dispute to prove that he is interested in or has connection with the dispute already pending for determination.

9. In the dispute registered as ID No.32/2003, appropriate Government forwarded an issue relating to regularization of services of 18 workmen with Indian Oil Corporation Ltd. List of those 18 workmen was annexed with schedule of reference. Name of the claimant appears at Sl. No.11 of the said list. Thus, it is evident that the claimant was one of the workmen, who had raised the dispute, which was pending adjudication when his services were allegedly dispensed with. Taking cognizance of these facts, it is concluded that the claimant was concerned in the dispute pending adjudication before this Tribunal. The issue is, therefore, answered in favour of the claimant and against the Corporation.

Issue No. 2

10. Section 33 of the Act bars alteration in conditions of service "prejudicial" to the workman concerned in the dispute and punishment of discharge or dismissal when either is connected with pendente lite industrial dispute "save with the permission of the authorities before which the proceedings is pending" or where the discharge or dismissal is for any misconduct not connected with the pendente lite industrial dispute without the "approval of such authority". Prohibition contained in section 33 of the Act is two fold. On one hand, they are designed to protect the workman concerned during the course of industrial conciliation, arbitration and adjudication, against employers' harassment and victimization, on account of their having raised the industrial dispute or their continuing the pending proceedings and on the other, they seek to maintain status quo by prescribing management conduct which may give rise to "fresh dispute" which further exacerbate the already strained relations between employer and the workman. Where industrial disputes are pendente lite before an authority mentioned in the section, it was thought necessary that such disputes should be conciliated or adjudicated upon by the authority in a peaceful atmosphere, undisturbed by any subsequent causes for bitterness or unpleasantness. To achieve this object, a ban has been imposed upon the employer exercising his common law, statutory or contractual right to terminate the services of his employees according to contract or the provisions of law governing such service. The ordinary right of the employer to alter the terms of his employees' services to their prejudice or to terminate their services under the general law governing, contract of employment, has been banned subject to certain conditions. This ban, therefore, is designed to restrict the interference of the general rights and liabilities of the parties under the ordinary law within the limits truly necessary for accomplishing the object of those provisions. Anxiety to know about ban on

the right of the employer, persuades me to reproduce the provisions of section 33 of the Act thus:

> "33. Conditions of service, etc., to remain unchanged under certain circumstances during pendancy of proceedings. —(1) During the pendancy of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before an arbitrator or a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall ,-
>
> (a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or
>
> (b) for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workman concerned in such dispute, save with the express permission in writing of the authority before which the proceeding is pending.
>
> (2) During the pendancy of any such proceeding in respect of an industrial dispute, the employer may, in accordance with standing orders applicable to a workman concerned in such dispute or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman—
>
> (a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding ; or
>
> (b) for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman:
>
> Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.
>
> (3) Notwithstanding anything contained in sub-section (2), no employer shall, during the pendancy of any such proceeding in respect of an industrial dispute, take any action against any protected workman concerned in such dispute —
>
> (a) by altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceeding; or
>
> (b) by discharging or punishing, whether any dismissal or otherwise, such protected workman,
>
> save with the express permission in writing of the authority before which the proceeding is pending.
>
> *Explanation.* — For the purposes of this sub-section, a "protected workman", in relation to an establishment, means a workman who, being a member of the executive or other office bearer of a registered trade union connected with the establishment, is recognized as such in accordance with rules made in this behalf.
>
> (4) In every establishment, the number of workmen to be recognized as protected workmen for the purposes of sub-section (3) shall be one per cent of the total number of workmen employed therein subject to a minimum number of five protected workmen and a maximum number of one hundred protected workmen and for the aforesaid purpose, the appropriate Government may make rules providing for the distribution of such protected workmen among various trade unions, if any, connected with the establishment and the manner in which the workmen may be chosen and recognized as protected workmen.
>
> (5) Where an employer makes an application to a conciliation officer, Board, an arbitrator, a Labour Court, Tribunal or National Tribunal under the proviso to sub-section; (2) for approval of the action taken by him, the authority concerned shall, without delay, hear such application and pass, within a period of three months from the date of receipt of such application, such order in relation thereto as it deems fit:
>
> Provided that where any such authority considers it necessary or expedient so to do, it may, for reasons to be recorded in writing, extend such period by such further period as it may think fit:
>
> Provided further that no proceedings before any such authority shall lapse merely on the ground that any period specified in this sub-section had expired without such proceedings being completed.

11. As noted above sub-sections (1) and (2) are designed for different purposes since sub-section (1) applies to the proposition when the employer wants to alter service conditions of the workman to his prejudice in regard to any matter connected with the dispute or for any misconduct connected with the dispute, in that situation he is obliged to seek prior permission in writing of the authority before whom the dispute is pending and in a case where the employer wants to alter service conditions of a workman in regard to a matter not connected with the dispute or for any misconduct not connected with the dispute, in that situation he is obliged to seek approval of the order under sub-section (2) of the aforesaid section. When an employer violates the provisions of sub-section (1) or sub-section (2) of section 33 of the Act, an instant remedy is provided to the workman by the provisions of section 33A of the Act. In other words,

where an employer has contravened the provisions of section 33, the aggrieved workman has been given the option to make a complaint in writing, to the authority before which an industrial dispute is pending, with which the aggrieved workman is concerned. The complaint of such contravention can be made not to the adjudicating authorities, but to the conciliatory authority also. If a complaint is made to a conciliatory authority, *viz.* a Conciliation Officer or a Board of Conciliation, clause (a) of section 33 A of the act authorizes a Conciliation Officer or the Board to take such complaint into account in bringing about a settlement of the complained dispute. The Conciliation Officer or the Board is not empowered to adjudicate upon the dispute, which is the area of adjudicatory authorities. When a complaint is made to adjudicatory authority *viz.* Arbitrator, Labour Court, Tribunal or National Tribunal, it will adjudicate upon the dispute as if it is a dispute referred to or pending before it.

12. To attract the provisions of section 33A of the Act, following conditions precedent are to be satisfied:

1. that there should have been a contravention by the management of the provisions of section 33 of the Act,
2. that the contravention should have been during the pendancy of the proceedings before the conciliatory authorities or Labour Court, Tribunal or National Tribunal , as the case may be,
3. that the complainant should have been aggrieved by the contravention, and
4. that the application should have been made to the Labour Court, Tribunal or the National Tribunal in which original proceedings are pending.

13. It is obligatory on the claimant to establish on record that the Corporation has contravened provisions of section 33 of the Act, during pendancy of adjudication proceedings in respect of the dispute registered as ID No.32/2003. In order to discharge that onus, claimant was duty bound to adduce evidence to establish that his services were dispensed with by the Corporation. Instead of adducing any evidence, the claimant opted not to enter the witness box. Therefore, there remains complete vacuum of evidence to the effect as to whether services of the claimant were dispensed with during pendancy of the aforesaid industrial dispute before the Tribunal. Not even an iota of evidence is over the record to conclude that the Corporation has violated provisions of section 33 of the Act. Onus was on the claimant to establish contravention of the provisions of section 33 of the Act, which has not been discharged by him. In the absence of material evidence, findings cannot be recorded to the effect that the Corporation dispensed with the services of the claimant and contravened provisions of section 33 of the Act. For desideratum of evidence, it is concluded at the claimant has miserably failed to establish that the Corporation has contravened provisions of section 33 of the Act, during pendancy of adjudication proceedings of the dispute referred above. Resultantly, the issue is answered against the claimant and in favour of the Corporation.

Issue No.3

14. In view of the findings on Issue No 2, it is apparent that the claimant is not entitled to any relief. Complaint, raised by the claimant under section 33A of the Act, cannot be answered in his favour. He is not entitled to any relief. Resultantly, his complaint is dismissed. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dated: 13.9.2013

Dr. R.K. YADAV, Presiding Officer.

नई दिल्ली, 24 सितम्बर, 2013

का॰आ॰ 2304.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स निदेशक एयरपोर्ट, नागपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायलय, नागपुर के पंचाट (संदर्भ संख्या 49/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23.09.2013 को प्राप्त हुआ था।

[सं॰ एल-11012/12/2007-आई आर(एम)]
जोहन तोपनो, अवर सचिव

New Delhi, the 24th September, 2013

S.O. 2304.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 49/2007) of the Central Government Industrial Tribunal/Labour Court, Nagpur now as in the Annexure in the Industrial Dispute between the employers in relation to the management of Air Port Director, Nagpur and their workman, which was received by the Central Government on 23.09.2013.

[No. L-11012/12/2007-IR(M)]
JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT-NGP/49/2007

Party No. 1 : The Airport Director, (NAD), Nagpur Airport, Regional Office, Nagpur

Party No. 2 : Shri Ramesh Shankarrao Nandgave,
C/o. R.N. Sindel, Plot No. 99,
Nardelwar Nagar, in Front of D.S.
Vidhyalaya, Wardha Road,
Chinch Bhavan Post: Khapri, Nagpur.

AWARD

(Dated: 19th August, 2013)

In excercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Airport Authority of India and their workman, Shri Ramesh Nandgave, for adjudication, as per letter No.L-11012/12/2007-IR(M) dated 27.08.2007, with the following schedule:-

> "Whether the action of the management of Airport Authority of India through its Airport Director, Nagpur in terminating the service of workman Shri Ramesh Shankarrao Nandgave w.e.f.. 07.04.1999 is legal and justified? If not, then what is the relief the workman is entitled to?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Ramesh Nandgave, ('the workman" in short), filed the statement of claim and the management of Airport Authority of India, ("Party No. 1" in short) filed their written statement.

The case of the workman is that he was in the employment of Party No. 1 and was working as a permanent motor driver (higher grade) (MTD) and he has completed 19 years of unblemished service, but Party No. 1 removed him from service w.e.f. 07.04.1999 illegally, in an absolutely arbitrary manner and in violation of the principles of natural justice and his removal from services was without conducting of any departmental enquiry, but the same was done in a haste, on false allegation and trumped-up-charge of absence without leave and on receipt of the "memorandum" issued by the Party No. 1, on 26.03.1999, though he was suffering from jaundice, he approached the Party No. 1, in person on 26.03.1999 itself, alongwith joining report and medical certificate to join duty, which was within the stipulated period as mentioned in the said memorandum, but he was instructed by the Airport Director to see the EMO for submission of the joining report, but at the relevant time, the EMO was not present in his cabin, for which, he waited for the return of the EMO and the EMO returned to the office in the evening hours and asked him to come on the next day and from 26.03.1999 to 9th April 1999, he approached the EMO and Airport Director daily to allow him to join duty, but they refused to accept and acknowledge the joining report and medical certificate and he made number of representation to the concerned higher authorities for redress of his genunie grievances, but of no avail and as such, the industrial dispute was raised by him.

It is further pleaded by the workman that his services were terminated during the process of his transfer from Nagpur to Indore on promotion as "Dirver Super".

The workman has prayed for his reinstatement in service with continuity and full back wages.

3. In the written statement, it has been pleaded by Party No.1 *inter-alia* that the workman was initially appointed in Civil Aviation Department on 07.09.1981 as a driver (fire) and subsequently, he was absorbed in National Airport Authority of India w.e.f. 02.10.1989 and his service was placed with Airport Authority of India from 01.04.1995 and he was re-mustered to the post of M.T. Driver (higher grade) from driver (fire) since 04.03.1996 and the workman absconded from 05.06.1996 to 13.011.1998 (for a total period of 523 days) and remained absent from duty without any leave and as such, the services of the workman were terminated after completion of all necessary legal proceeding including giving of press notice and it had issued 14 memorandums in between 24.10.1990 to 12.01.1999 and three memos were issued followed by notice in Newspaper to the workman, before he was terminated from services, but he did not come to join his duty within the stipulated time and as the workman had not approached to join his duty within the stipulated period, after issuance of the memos and notices, there was no question of refusing to accept and acknowledge the joining report and medical certificate by its authority and the workman was never vigilant and he did not try to give any explanation regarding his absence and though the workman had submitted that he was ill from jaundice, he failed to intimate about his illness or to submit any leave application to it and as the workman was absent from duty without prior permission for a period of 380 days during the period from 25.04.1997 to 25.10.1998 and in view of the irregular attendance, careless driving habit and misconduct of the workman, the Airport Director had recommended to the Regional Executive Director, Mumbai for his transfer and the Regional Executive Director, Mumbai had issued the order of transfer of the workman from Nagpur to Indore on administrative ground and the workman was not transferred on promotion of driver supervisor and the claim of the workman is based on false and imaginary grounds and the mandatory provisions was not complied with by the workman and the claim has been filed beyond limitation and is therefore liable to be dismissed.

The specific plea of the Party No.1 is that the workman absented from duty without information or prior sanction of leave, so he was advised by memorandum no. Con/E2/99/68-70 dated 10.03.1999 to submit his explanation for remaining absent without authorized leave and to join duty within 10 days of the issuance of the memorandum, failing which, it would be presumed that he is not interested in

continuing his employment and the workman received the memorandum, but neither he reported for duty nor responded to the memorandum within the stipulated time, so on 23.03.1999, again a memorandum was issued to the workman intimating that he failed to join duty within the stipulated time and remained absent unauthorisedly, from which it could be presumed that he is disinterestness in continuing in service and to submit his explanation as to why his name should not be removed from the rolls and he was directed to join duty within 15 days, but however, the workman failed to join duty within the stipulated period, so he was intimated that he had abandoned the employment on his own volition and his name had been removed from its rolls, which was followed by public notice in two local news papers in Marathi and Hindi and after termination, the workman press hard for his final payment of CPF/GSLIS/ gratuity and BF etc. and he had been paid a sum of Rs. 1,06,050 towards CPF during November, 2000 and a sum of Rs. 1100 towards BF during October, 2000 and therefore, the workman is not entitled to any relief.

4. In the rejoinder, it has been pleaded by the workman that the charge of absconding levelled against him is frivolous, trumped-up and concocted and his claim is based on absolute genuine and *bona-fide* grounds and the filing of the claim is well within the limitation and termination of his services was without following the due procedure of law and principles of natural justice and equity and so far the payment of CPF is concerned, it was inevitable and unavoidable in the circumstances arising out of termination of his service and the charge of his frequent unauthorized absence is false and he is entitled for reinstatement in service with continuity and full back wages.

5. In support of their respective claims, both the parties have led oral evidence, besides placing reliance on documentary evidence.

Three witnesses including the workman have been examined on behalf of the workman, whereas only one witness, namely Shri R.P. Nandanwar has been examined on behalf of the Party No. 1.

6. In his examination-in-chief, which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim. In his cross-examination, the workman has admitted that on 04.09.1996, he was appointed as a higher grade M.T. Driver and on 01.04.1995, he had joined in the office of the Airport Authority and he received the memorandum dated 23.03.1999 issued by the Party No.1 on 26.03.1999 and after receipt of his termination letter, he represented for release of his CPF and other entitlements.

7. The witness no.2, Shri Ramchandra Punjabrao Bobde for the workman in his evidence has stated that he was working as the senior superintendent of Fire and at the relevant time *i.e.* the period during which, the process of the termination of the workman was going on, Shri S.S. Subhu was the EMO, who was the section incharge of the M.T. Pool and repairing workshop and he had seen the workman of making personal approaches from 26th March, 1999 to 9th April, 1990 to the EMO for the purpose of joining duty even though he (workman) was suffering from Jaundice and the workman was terminated from service w.e.f. 7th April, 1999 without conducting any departmental enquiry.

Though this witness has been cross-examined at length, his evidence that the workman approached the EMO from 26.03.1999 to 09.04.1999 for the purpose of joining duty has remained un-assailed.

8. The evidence of witness no.3, Shri Rameshwar V. Uike for the workman is also in the line of the evidence of the witness no.2. The evidence of this witness in regard to the facts that the workman had approached the EMO from 26.03.1999 to 09.04.1999, for the purpose of joining duty has not been seriously challenged in the cross-examination.

9. The evidence of the witness for the Party No. 1 is also on affidavit. This witness has also reiterated the facts mentioned in the written statement, in his examination-in-chief. This witness has also proved the memorandums issued to the workman on 17.03.1998 and 01.07.1998 and other documents as Exts. M-II to M-XVI.

In his cross-examination, the witness for Party No.1 has admitted that there was no departmental proceeding against the workman and management did not submit any charge sheet against the workman for remaining unauthorized absence from 05.06.1996 to 07.04.1999 and there was also no departmental enquiry against him.

10. At the time of argument, (written notes of argument) it was submitted by the learned advocate for the workman that there is sufficient material on record in the form of cogent oral and conclusive documentary any evidence to show that the workman was illegally and unjustifiably terminated from services *w.e.f.* 07.04.1999 and the termination of the workman was without submission of charge sheet or conducting of any departmental enquiry and the same was in complete violation of the principles of natural justice and though after receipt of the memorandum dated 23.03.1999, the workman approached the competent authority personally from 26.03.1999 to 09.04.1999 to allow him to join duty, he was not allowed to join duty and such facts have been fully proved not only from the evidence of the workman, but also, from the evidence of the two other witnesses examined by the workman and the evidence adduced by the management is devoid of merit and substance and is without any basis and as such, the workman is entitled for reinstatement in service with continuity and full back wages.

11. Per contra, it was submitted by the learned advocate for the Party No.1 that the workman remained absent from duty without sanction of leave for 523 days in

between 05.06.1996 to 13.11.1998 and the witness for the management has stated about such facts in his evidence and the documents Exts. M-IV and M-VII also prove such facts and several memorandums were issued to the workman by registered post with acknowledgement due to join duty within the stipulated time and the workman received the same, but inspite of the same, as the workman did not join duty within the time given in the memorandums, he was terminated from service and the termination of the workman is legal and justified and the same was done after compliance of all the legal formalities and Exts. M-II to M-XVI amply prove such facts and the workman is not entitled to any relief.

12. In this case, in paragraph one of the written statement, the party no.1 has pleaded that, the workman absconded from 05.06.1996 to 13.11.1998 and remained absent from duty without leave and after completion of all necessary legal proceedings including press notice, his services were terminated. In paragraph five of the written statement, it has been pleaded by party no. 1 that the workman was absent from his duty without prior permission for a period of 380 days during the period from 25.04.1997 to 25.10.1998 and on the recommendation of the Airport Director, the Regional Executive Director, Mumbai had issued order of transfer of the workman from Nagpur to Indore on administrative ground and even after transfer order, the workman did not approach the management and after giving three notices successively, the workman was terminated.

In paragraph 6 of the written statement, it has been pleaded by party no.1 that the termination is caused due to the long absence without leave and prior permission and failing to explain his reason for being absent inspite of various opportunities given to him, so he is not entitled for relief claimed. In "special pleadings" also the party no.1 has taken the same stand.

13. On perusal of Ext. M-IV, the memorandum dated 01.07.1998 filed by the party no.1, it is found that the claim of party no.1 that the workman absconded from 05.06.1996 to 13.11.1998 is not at all correct. Ext. M-IV shows the periods of absence of the workman from duty and the applications submitted by him for different leaves. In Ext. M-IV, the workman was advised and cautioned to attend duty punctually, regularly and in orderly manner, failing which disciplinary action deemed fit would be taken against him. From Ext. M-IV, which is a letter written by the Airport Director to the Executive Director (WR), Mumbai Airport, it is found that the workman had applied for medical leave for the periods from 25.04.1997 to 17.07.1997, 12.08.1997 to 29.09.1997 and 11.07.1998 to 25.10.1998 and E.L. for 31.12.1997 to 19.05.1998. In the said letter, it has also been mentioned that the workman while joining duty on 20.05.1998, requested for his transfer out of Nagpur and the Airport Director recommended for his transfer.

Ext. M-VII, which is "compilation report against Shri R.S. Nandgave, MTD" shows that the workman had submitted applications for availing different leaves for the different periods of his absence including the period from 31.12.1997 to 19.05.1998 and 11.07.1998 to 25.10.1998. In Ext. M-VII, it has also been mentioned that message had been received about the sickness of the workman for remaining absence from 07.11.1998 to 13.11.1998, but unfit certificate was not received. In the same document, it has been mentioned that, At present from 07.11.1998 till date (13.11.1998) he has reported for duty but informed through ATC that he is sick. No unfit certificate received.

After reporting for duty in Nagpur, he was present only for few days and in that few days he was found maximum days in intoxicated mood.

It is therefore, requested that the necessary disciplinary action may be taken against Shri R.S. Nandgave, MTD and make it an example for other staff in this section."

From the contents of the documents, it is clear that the claim of the party no.1 that the workman absconded from 05.06.1996 to 13.11.1998 is not all correct.

14. Though, the workman has denied the receipt of the memorandums, Ext. M-II, M-IV and M-X, from the acknowledgement due, it is found that the workman had received the said memorandums. However, it is to be mentioned here that vide memorandum, Ext. M-VIII, which was issued on 23.03.1999, the workman was directed to join duty within 15 days of the issue of the memorandum, failing which it would be presumed that he is not interested to continue in service. The stipulated 15 days time was to expire on 07.04.2013, as the said memorandum was issued on 23.031999. But, Ext. M-XII shows that the name of the workman was removed from the rolls of party no.1 as per order dated 05.04.1999, which was prior to the stipulated time given to the workman for joining duty. Moreover, Ext. M-XII does not indicate that the name of the workman was removed from the rolls w.e.f. 07.04.1999. Hence, the order passed on 05.04.1999 as per Ext. M-XII is illegal.

15. The most important point in this case is the legality of the action of the party no.1 in terminating the services of the workman. Admittedly, no charge sheet of any kind for commission of any misconduct including remaining of unauthorized absence was submitted against the workman. It is also admitted that no departmental enquiry was conducted against the workman for remaining unauthorized absence. None of the memorandums or other documents filed by the party no. 1 shows as to under what provisions of law, Rules, Regulations, Certified Standing Orders if any or Bipartite settlement if any, the memorandums were issued and the order of termination was passed. The party no.1 has also not mentioned under what provisions the order of termination of the workman was passed either in the written statement or in the evidence adduced in the reference. The party no.1 has also not produced any Rules or Regulation

or any other relevant documents to show the provision of terminating the services of the workman by merely serving memorandums to join duty, without taking action by initiating departmental proceedings against him.

16. In view of the materials on record and the facts mentioned above, it is found that the termination of the workman is illegal and against the principles of natural justice and the workman is entitled to reinstatement in service with continuity. The submission of the application by the workman for release of CPF cannot be taken as a ground for holding the order of termination as valid.

So far the back wages is concerned, after taking into consideration the facts and circumstances of the case, I think that ends of justice will be met if 25% of the back wages is granted in favour of the workman. Hence, it is ordered:—

ORDER

The action of the management of Airport Authority of India through its Airport Director, Nagpur in terminating the service of workman Shri Ramesh Shankarrao Nandgave w.e.f. 07.04.1999 is illegal and unjustified. The workman is entitled for reinstatement in service with continuity and all consequential reliefs and for 25% of back wages from 07.04.1999 to the date of his actual date of joining. The party no.1 is directed to implement the award within 30 days of the publication of the award in the official gazette.

J. P. CHAND, Presiding Officer

नई दिल्ली, 24 सितम्बर, 2013

का॰आ॰ 2305.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स पुटका पहाड माइंस आफ बालकों जिला विलासपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 2 / 1997) को प्रकाशित करती है जो केन्द्रीय सरकार को 23/9/2013 को प्राप्त हुआ था।

[सं॰ एल-43011/2/96-आई आर (एम)]
जोहन तोपनो, अवर सचिव

New Delhi, the 24th September, 2013

S.O. 2305.—In pursuance of section 17 of the Indusutrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 2/97) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Phutkapahar Mines of Balco, District (Bilaspur) and their workman, which was received by the Central Government on 23/9/2013.

[No. L-43011/2/96-IR(M)]
JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/2/97

PRESIDING OFFICER: SHRI R.B PATLE

The Secretary
Samyukta Khadan Mazdoor Sangh (AITUC),
Branch Phutkapahar Mines of Balco,
PO Balco Nagar,
Korba, Distt. Bilaspur ....Workman/Union

Versus

Mines Manager,
Phutkapahar Mines of Balco,
Po Balco Nagar,
Distt. Bilaspur (MP) ....Management

Á W A R D

Passed on this 24th day of July, 2013

1. As per letter dated 27-12-96 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section - 10 of I.D. Act, 1947 as per Notification No. L-43011/2/96-IR (Misc). The dispute under reference relates to:

> "Whether the demand of Samyukta Khadan Mazdoor Sang (AITUC), Branch Phutkapahar Mines for payment of leave with wages to the contract labour of Phutkapahar Mines by the contractors namely M/s. Narmada Transport Associates, M/s. Sidhy Construction Company and M/s. U.S. Agarwal for the period of contract from 17-5-93 to 7-6-95, 1-8-94 to 1-7-95 and from 18-7-94 to 20-5-95 respectively and by the management of BALCO, Korba @ one day for every 20 day of work taking into the Unions eligibility criteria as mentioned below is justified? If so, to what relief the workmen are entitled to?"

Vide corrigendum dated 5-2-97, the following is added in the schedule-

> "Ëligibility Criteria: Leave with wages should be paid to all the contract laboures, who have worked 2/3rd of period of contract excluding Sundays and paid Holidays from the period of contract."

2. After receiving reference, notices were issued to the parties. Ist party did not appear and participate in the reference proceedings. 1st party is proceeded exparate on 6-7-07.

3. Management has not field Written Statement or evidence though the case was repeatdely fixed. Therefore

it appears that parties are not in dispute.

4. In the result, No dispute award is passed.

R.B. PATLE, Presiding Officer

नई दिल्ली, 24 सितम्बर, 2013

का॰आ॰ 2306.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बी के इंजीनियरिंग कार्पोरेशन लि॰ भिलाई एम॰पी॰ के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 300 / 1997) प्रकाशित करती है जो केन्द्रीय सरकार को 23/9/2013 को प्राप्त हुआ था।

[सं॰ एल-29011/17/97-आई आर (एम)]
जोहन तोपनो, अवर सचिव

New Delhi, the 24th September, 2013

S.O. 2306.—In pursuance of section 17 of the Indusutrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 300/97) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Beekay Engineering Corporation Ltd., Bhilai (MP) and their workman, which was received by the Central Government on 23/9/2013.

[No. L-29011/17/97-IR(M)]
JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/300/97

PRESIDING OFFICER: SHRI R.B PATLE
Hindustan Steel Employees Union,
Bhilai, Affiliated to CITU,
Branch Dalli-Rajhara,
Distt. Durg ....Workman/Union

Versus

M/s. Beekay Engineering Corporation Ltd.,
45/47, Industrial Estate,
Bhilai (MP) ....Management

Á W A R D

Passed on this 26th day of July, 2013

1. As per letter dated 21-10-97 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section - 10 of I.D. Act, 1947 as per Notification No. L-29011/17/97-IR (Misc). The dispute under reference relates to:

Whether the action of the management of M/s. Beekay Engineering Corporation a contractor of I.O.C. of Bhilai Steel Plant in refusing employment to Shri Ketu Ram and 45 other (as per list enclosed) w.e.f. 20-1-96 is lawful and justified. If not, to what relief the workmen are entitlted to?

2. 1st party Union is challenging refusal of employment to Shri Ketu Ram and 45 others in the dispute under reference. Even after issuing notices, the Union did not participate in the proceeding, no statement of claim is field. On 16-2-2010, case proceeded for filing Written Statement by management.

3. IInd party management also not filed Written Statement. From conduct of the parties, it is clear that the parties are not pursuing or participating in the dispute.

4. In the result, award is passed as under:-

"Reference is disposed off as No Dispute Award".

R.B. PATLE, Presiding Officer

नई दिल्ली, 24 सितम्बर, 2013

का॰आ॰ 2307.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स मलंजखंड कॉपर प्रोजक्ट जिला बालाघाट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायलय, जबलपुर के पंचाट (संदर्भ संख्या 112 / 87) प्रकाशित करती है जो केन्द्रीय सरकार को 23/9/2013 को प्राप्त हुआ था।

[सं॰ एल-43012/37/85-डी. III (बी)]

जोहन तोपनो, अवर सचिव

New Delhi, the 24th September, 2013

S.O. 2307.—In pursuance of section 17 of the Indusutrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 112/87) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Malanjkhand Cooper Project, District (Balaghat) and their workman, which was received by the Central Government on 23/9/2013.

[No. L-43012/37/85-D.III (B)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO: CGIT/LC/R/112/87

PRESIDING OFFICER: SHRI R.B. PATLE

The President,
Bhartiya Khanij Mazdoor Sangh (BMS),
PO Malanjkhand,
Distt. Balaghat ....Workman/Union

Versus

The Deputy General Manager, (P&A),
Malanjkhand Copper Project,
PO Malanjkhand,
Distt. Balaghat

AWARD

Passed on this 8th day of July, 2013

1. As per letter dated 14-7-87 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-43012/37/87-D. III(B). The dispute under reference relates to:

2. "Whether the action of the management of Malanjkhand Copper Project PO Malanjkhand, Distt. Balaghat in putting Shri P.K. Gupta, Compounder to the minimum of the scale, stopping his two yearly increments and cautioning him is justified? If not, to what relief the concerned workman is entitled?"

3. After receiving reference, notices were issued to the parties. Perusal of record shows that Union filed reply on 23-8-88. The statement of claim by management if filed at Page 4/1 to 4/3. The case of IInd party as per the Written Statement is that objection is raised that the reference is not tenable under I.D. Act. Dispute between parties relates to the minimum punishment imposed on workman working as Compounder. That the concerned workman is not an employee under I.D. Act. Union has no right to take the dispute. The reference is not tenable. It also prayed opportunity to proving misconduct if the enquiry conducted against workman is found illegal. That the Ist party workman was employed as compounder. He was found involved in unauthorized sale of medicines to retain incentive medicine and theft of the medicines of the Company's hospital. Chargesheet was issued to the workman in addition to committing theft, pilferage, breach of trust, dishonesty, fraud and willful negligence, taking illegal gratification, misappropriation etc. the workman replied the chargesheet. The Competent Authority decided to hold enquiry against him. Enquiry Officer was appointed. Delinquent Shri P.K. Gupta was given opportunity to defend himself.

He was allowed to cross-examine the witnesses and examine his own witness. That enquiry was properly conducted. Workman was found guilty of the charges considering the report of the Enquiry Officer and the material submitted with report. Considering the gravity of charges, minor punishment was imposed. Leniency was shown. The punishment imposed is legal. IInd party prayed for rejection of claim.

Workman/Union filed reply at Page 10/1 to 10/8. It is submitted that the objection raised by Ist party about the order of reference is not proper and bonafide. That the job evaluation of workman of Malajkhand Copper Project has been done in two instalments. In first instalment, job evaluation of the technical workers have been done and in the second instalment the same of the para medical and clerical workers was done. In IInd instalment, job evaluation of compounder has been included as workman and given all benefits. It is contented that the reference is not bad. It needs to be adjudicated by this Tribunal. Workman/ Union being aggrieved by the punishment, whatsoever may be its quantum, they have right to challenge by raising the dispute. As per Section 11-A, if not opportunity is given such enquiry found illegal is liable to be quashed. No enquiry was made before awarding punishment. Therefore it deserves to be quashed. The management is trying to unnecessary complicate the matter raising superfluous and unjustified objection as the dispute is referred to this Tribunal by appropriate Government needs to be adjudicated.

4. It is further submitted that Shri P.K. Gupta is permanent employee of Malajkhand Copper Project. His Code No. is 600. He was working as Compounder. There is a store attached to the hospital of the MCP and medicines are kept therein, Duties of compounder are well laid down. The workman in question as a compounder is expected to do his normal duties of compounder. Compounder is not expected to lookafter the duties of store keeper. When any employee is ordered to do any other duty other than his prescribed duty, order is given in writing to avoid and apprehension in future.

5. Medical officer in hospital has unauthorisely ordered Shri P.K. Gupta to look after the work of hospital store. It was not part of his duty as compounder. The person giving the order was not competent to give such oral orders. It is illegal. The employee cannot be charge of any misconduct if he commits some mistake in doing their duty because allotment of duty is illegal. Shri P.K. Gupta vide chargesheet dated 10-7-82 was called upon to reply 4 charges levelled against him in respect of his so called duty of looking after the store keeping and purchasing of medicine, duties illegally allotted to him. Chargesheet was issued by Dy. General Manager (P&A) who was not competent authority to punish him. The substance of allegations against him were (a) that he exported and obtained commission @ 2% for purchase of medicines from M/s. Nathmal Hukumchand Kankariya of Balaghat and M/s. M.P. Medical Store Balaghat, (b) after purchasing a packet of medicine for MCP Hospital from M/s. Hathmal Hukumchand Kankarya, offered the same packet to the said shopkeeper to keep it in his shop for sale, (c) such activities were committed and selling company medicines to the firms in order to earn wrongful gain for himself and

cause loss to the company, (d) attempted to cause disadvantage to the company and undue advantage to himself by accepting medicines from firm under the incentive scheme, (e) on stock verification on 1-7-82, some medicines were found in excess and some in short and huge quantity of medicines were found unaccounted in the store.

6. The charges against the delinquent employee were about (i) theft, fraud, breach of trust and dishonesty, (ii) willful negligence, (iii) Taking and attemption to take illegal gratification, (iv) Mis-appropriation and commission of acts, causing loss to the company. All the charges were denied by the deliquent employee. Enquiry officer held the charge of negligence in duties and store keeper was proved. That charge of committing theft of medicines from store, Enquiry Officer observed said charge was proved. Enquiry Officer had also observed that the packet of medicines were kept in the outer counter and same were surrendered to Shri Kaul Vigilance officer during preliminary enquiry. That the DGMPA referred the enquiry report to the Executive Director who disagreed with the findings of the Enquiry Officer and held all charges proved and directed punishment against the delinquent. Vide order dated 23-7-83, the Dy. General Manager (P&A) without making any reference to the directions of the Executive Director issued the order of punishment. The pay of delinquent was reduced to the minimum of the scale regarding frist two charges, (2) stoppage of 2 yearly increaments without cumulative effect for other two charges, (3) warning that repetition of such and similar mistake shall be very seriously viewed in future, (iv) though suspension order was revoked with immediate effect and nothing was mentioned about no treating the suspension period on duty and payment of full pay during the suspension period.

7. Ist party submits that enquiry officer rightly observed in para-2 of his report that because the delinquent was not given any opportunity to corss-examine these persons, the delinquent could not be punished on the hear say evidence. That there is no written order by the Competent Authority to work as store keeper in addition to his duties as compounder. That the competent authority to punish the delinquent was the Executive Director. No theft could have committed by the delinquent when he has stated that materials were kept in rack of the outside counter and produced before the Vigilence Officer. It is submitted that the statement of Miss Rosamma Joseph, Lab Technician could not be relief as her statement is false. On such ground, Ist party prayed that the order of punishment is illegal. It deserves to be set aside.

8. Considering pendings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Malanjkhand Copper. Project PO Malanjkhand, Distt. Balaghat inputting, Shri P.K. Gupta, Compounder to the minimum of the scale, stopping his two yearly increments and cautioning him is legal?	In Affirmative
(ii) if so, what relief the workman is entitled to	Relief prayed by workman is rejected.

REASONS

9. Though legality of punishment imposed against Shri P.K. Gupta is challenged by the Union, no evidence is adduced by Union to substantiate his claim. The evidence of Union was closed on 13-7-05. The perusal of record shows that case was frequently adjourned for exparte evidence of management form 19-10-05 to 1-3-2013. The management did not adduce any evidence. Thus both parties failed to participated in the reference proceeding. Form pleadings on record, it appears that legality of enquiry proceeding was contended by the management and it was denied by the Union. However as parties failed to adduce evidence, dispute between parties cannot be decided without evidence. Therefore as parties failed to participate in proceeding, I hold my finding in Point No. 1 in Affirmative as Ist party failed to establish his contention.

10. In the result, award is passed as under:—

1. The action of the management of Malanjkhand Copper Project PO Malanjkhand, Distt. Balaghat inputting Shri P.K. Gupta, Compounder to the minimum of the scale, stopping his two yearly increments and cautioning him is legal.

2. Relief prayed by Wrokman is rejected.

R. B. PATLE, Presiding Officer

नई दिल्ली, 24 सितम्बर 2013

का॰आ॰ 2308.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स सीमंट कारपोरेशन आफ इंडिया जिला रायपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारो के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एव श्रम न्यायलय, जबलपुर के पंचाट (संदर्भ संख्या 144/87) को प्रकाशित करती है जो केन्द्रीय सरकार को 2/8/2013 को प्राप्त हुआ था।

[सं॰ एल-29011/18/84-डी. III(बी)]

जोहन तोपनो, अवर सचिव

New Delhi, the 24th September, 2013

S.O. 2308.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central

Government hereby publishes the Award (Ref. No. 144/87) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Cement Corporation of India, District (Raipur) and their workman, which was received by the Central Government on 02.08.2013.

[No. L-29011/18/84-D. III(B)]
JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/144/87

Presiding Officer: Shri R. B. PATLE

General Secretary,
Cement Awam Khadan Kamgar Sangh (BMS),
PO Mandhar Cement Factory,
Distt. Raipur (MP) ...Workman/Union

Versus

General Manager,
Cement Corporation of India,
PO Mandhar Cement Factory,
Distt. Raipur ...Management

AWARD

Passed on this 17th day of May 2013

1. As per letter dated 14-8-1987 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No.L-29011/18/84-D.III(B). The dispute under reference relates to:

> "Whether the action of the management of Cement Corporation of India Ltd. in retrenching their workmen employed through their contractors M/s Ahuja Constyruction and M/s Anil Transport Co. without following the provisions of I.D. Act and Rules and debarring the workman from payment of wages and other benefits in terms of Cement Wage Award, 1983 is justified? If not, to what relief the workmen are entitled?"

2. After receiving reference, notice were issued to the parties. Ist party General Secretary of Cement Awam Khadan Kamgar Sangh (BMS) Mr. S.N. Prasad filed statement of claim at Page 3/1 to 3/3 of the record. The Case of the Ist party workman is that the retrenched workman as shown in list Annexure-A were workmen of Cement Corporation of India, Mandhar Cement Factory, Pathri Mines *i.e.* IInd party. That various contractors were changed from time to time during the period 1977-78 till the date of retrenchment of labour. That the retrenched workman were always putting their demands to the Principal Employer *i.e.* Cement Corporation of India Ltd., Cement Factory and their respective contractors. They were requesting wages and other benefits as per Cement Wage Board Award 1983. Their demands were deliberately denied by the Principal Employer and contractors. The retrenched workmen were not paid minimum wages and other benefits as per Cement Wage Board Award time to time.

3. It is further submitted that the retrenched workman are regular workman of Cement Corporation of India Ltd., Cement Factory—Principal Employer. They were working in Pathri Mines from 1977-78 under various contractors of IInd party. The nature of work is regular process/permanent nature of job which is directly connected with production of cement. However to escape from responsibility to regularize/departmentalize the labourers the principal employer deliberately kept the labourers through contractors. The said act of the IInd party is in violation of Cement Wage Board Award 1983 and rules of Government of India.

4. The Captive Mines of Cement Corporation of India Ltd., Mandhar Cement Factory, Pathri Mines is within 10 Kms. distance from the Bank. As per provisions of Cement Wage Board Award, 1983, to be implemented for Pathri Mines Labours. However to exploit labours, IInd party CCI, Mandhar Cement Factory management intentionally violated the said award and the rules. Despite of various letters of demand to the Principal Employer at contractor, Asstt. Labour Commissioner and other authorities, no attention was paid. The dispute raised by retrenched workman during their service period were violated. The retrenched employees lodged their claims under Section 33(C) (2) of I.D.Act, 1947 for arrears of Cement Wage Board Award 1983 for the base 1982-83 and 83-84. The Principal Employer IInd party was irritated because of filing of proceeding. The machines were used instead of labour and the imployees were retrenched causing them unemployed.

5. That Principal Employer or the contractors not followed the procedure for retrenchment of the workman provided under Section 25-F, G, H of the I.D. Act. The retrenchment of workman is illegal. Rather it is alleged to be act of victimization by the employer.

6. It is further contented that illegal change by reducing strength of labours, use of machines at Mines. Secondly the labours are retrenched. It is nothing but denial of justice to the poor labours by management. That due to illegal retrenchment, the labours are denied wages, benefits under Wage Board Award 1983. That Principal Employer is solely responsible for payment of wages and

other benefits to the retrenched labours. That the cases relating to the payment of arrears are pending before this Tribunal. The management of IInd party and the contractors are party to said proceedings. During pendency of said proceeding, service conditions of labours cannot be changed without permission of Labour Court, no such permission was obtained by management or contractors for retrenchment. Therefore it is alleged that the retrenchment is illegal. It is an *malafide* act and victimization on above pleadings. Ist party Union prays for reinstatement of retrenched labours, wage benefits as per Cement Wage Board Award 1983 from Principal Employer, Mandhar Cement Factory from date of retrenchment till decision of the matter.

7. List Annexure-A shown names of 109 retrenched employees of M/s Ahuja Contractor and names of 164 retrenched labours of M/s Anil Transport company, names of 33 retrenched employees of M/s Vardhman Construction Company, CCI Ltd. Mandhar Cement Factory, Pathri Mines.

8. IInd party management filed Written Statement at page 4/2 to 4/6 of the record. IInd party submitted preliminary objection that is has not passed any order for retrenchment of the labours. Therefore it is not possible for me to offer any justification for passing such order. That the order of reference passed by Central Govt. is of erroneous assumption. The names of the retrenched employees are not appearing in the order of reference. That employees were not in effective control of the IInd party. The contractors were in effective control and pay musters of the employees. The contractor along could engage and terminate service of the employees. Therefore the liability cannot be fastened on the IInd party as there is no relationship of employer and employee. That the dispute between parties has not been reflected in the order of reference. The reference is ultra..... on the part of Central Government, no adjudication proceeding can therefore take place in respect of the reference.

9. That as per the recitals of the reference order, industrial dispute exists between the parties. However the order of reference does not disclose the names of persons alleged to have been retrenched. In absence of their names in reference, there cannot be adjudication. The names of contractors are not arrayed as party in the reference. Therefore this Tribunal is precluded from adjudication of dispute about relationship of employer and employee. The reference in present form is imperfect, improper and contrary to the facts and law. Therefore no adjudication shall remain.

10. On merit, IInd party submits that IInd party had awarded contracts to various contractors for work at Parthi Mines of Mandhar Cement Factory. IInd party did not retrench any labour. IInd party was claiming that the labours supplied by the contractors were paid wages as per the rules and regulations payment of Wages Act, Minimum Wages Act. It is further submitted that the labours engaged by contractor are migratory in nature. There was no occasion for management to retrench any employees. The retrenched employees were never engaged by IInd party. It is denied that those employees were regular workman of IInd party. That time to time settlements were raised between contract labours and contractors before the authorities. It is not disputed that application under Section 33(C)(2) of I.D. Act, 1947 is pending for adjudication. It is submitted that said applications were dismissed on 19-11-84 consequent to settlement arrived between labours and contractors before ALC(C).

11. IInd party admits that it had taken policy decision to mechanized mine work. It denies that any procedure was required to be followed by the IInd party. It is denied that alleged retrenched workman shown in para-6 of the Statement of Claim any procedure was required to be followed for retrenchment by the IInd party. It is denied that any procedure relating to Payment of Wages Act is pending. It is submitted that prayers made on behalf of alleged retrenched workman is wrong. IInd party management prays for rejection of the demands.

12. 1st party workman submitted rejoinder at Page 5/1 to 5/5. 1st party submits that as per decisions of the Hon'ble Supreme Court and High Courts, the Principal Employer is the employer of the contract labours also. The contractor has no independent entity. That IInd party CCI, Mandhar Cement Factory is Principal Employer of the retrenched labours. Retrenched labours were regularly engaged through various contractors by IInd party during the period 1977-78. The contractors were changed but labours were not changed till their retrenchment. The work is of regular nature such as packing house loading and unloading contract labours and coal, gypsum (Raw Material Handling) contract labourers. Contract Labours were paid wages and other all benefits as per provisions of Cement Wage Board Award 1983. There work load has been fixed in comparison of minimum wages under said award. The nature of mines work is of regular process and work is of permanent nature directly related with production of cement. In order to avoid benefit of award, management of IInd party, retrenched labours. The labours were deliberately kept under contractor. IInd party CCI Ltd. at Mandhar Cement Factory are responsible for illegal retrenchment. That the contractors are only medium for exploitation of the workmen.

13. It is submitted that CCI, Mandhar Cement Factory is situated within 10 Kms. from Factory. As per provisions of Cement Wage Board Award 1983, the award should be implemented in captive mines situated within the said distance for the contract labours also. The management of IInd party did not implement the same Wage Board Award.

The labours gave 7 points charter of demands of IInd party. The IInd party and Cement Contractors had lodged claim for payment of minimum wages as per said award. In order to take revenge, the Pathri Mine was mechanized. Due to mechanization, employment of 400 labours were illegally retrenched. It is alleged that IInd party has made illegal change by reducing strength of labour.

14. The retrenched labours Pathri Mine has put up demand for implementation of award. As per letters dated 19-9-83, 26-9-83, 5-10-83, 20-10-83, 26-10-83, 8-11-83, 29-11-83, 10-12-83 and 8-12-83 to the different authorities, IInd party and the contractors. However there was no response to their demands. The retrenched labours lodged their claim before this Tribunal filing cases 221 to 231 under Section 33(C)(2) of I.D. Act.

15. The Ist party workman reiterated its claim for reinstatement of retrenched labours and recovery of arrears of wages as per Cement Wage Board Award 1983.

16. Considering pleadings between parties, my learned predecessor has framed issues on 30-12-88 which are as under. My findings are recorded against each of them for the reasons as below:—

(i)	Whether the persons alleged to have been retrenched were employed by the contractors named in the terms of reference?	Retrenched employees were engaged by contractors.
(ii)	Whether their exists any dispute between CCI and retrenched workmen?	In Negative
(iii)	Whether there existed any relationship of employer and employee between the parties as per terms of reference?	The relationship between retrenched e mployees is only towards employed by contractor as provided under Section 21 of Contract Labour (Regulation & Abolition) Act, 1970.
(iv)	Whether the action of the management of Cement Corporation of India Ltd. in retrenching their workmen employed through their contractors M/s. Ahuja Construction and M/s. Anil Transport Co. without following the provisions of I.D. Act and Rules?	Management of IInd party has not retrenched the employees employed by contractors.
(v)	Whether debarring the workmen from payment of wages and other benefits in terms of Cement Wage Award 1983 is justified?	Employees have not been debarred from claiming wages as per Cement Wage Award 1983
(vi)	Costs and Relief.	Relief prayed by Ist party/retrenched employees is rejected.

REASONS

17. Issue No. 1 to 3:—

Issue No. 1 pertains to whether the persons alleged to have been retrenched were engaged by contractors. The statement of claim submitted by Ist party Union shows three lists of 109 employees working with Ahuja contractor and 164 employees working with M/s Anil Transport, 30 employees working with M/s Vardhman contractors. However in the statement of claim, the employees claims that the contractors were changing. The labours remained same. The labours were doing the work connected with production. 1st party Union filed affidavit of labours Fekuram Verma, Manmodhi Mehtar, Ratiram Nishad, Dhanau Verma. Dhalsingh Sahu, Khorbahara Verma, Shyam Rattan Satnami, Mahesh Sahu and Naresh Verma. All of them have stated in their affidavit that since 1977-78, in February 1984 they were working in the Mine. That they were considering CCI as their employer as they could not be removed by contractor without order of CCI. In their cross-examination, they have stated identically that they were working with different contractors. First contractor was Akhraj Company,next was Karamal, thereafter Nemichand. Then Balmukund, then Ahuja then Jairam, Naharji ad Ashok and Anil. All these witnesses are stating that they were working through contractors. The Secretary

of the Union Shri S.N. Prasad filed his affidavit. He has stated that the contractors did not pay wages as per Wage Board Award 1983 despite of repeated requests and representations. In his cross-examination, Mr. Prasad Secretary of the Union says that management has not given any appointment letter to the workers. Mine supervisor of the management and also the contractor supervisor used to remain present at time of payment of the workers. The supervisors of lower cadre of management along with contractor supervisor used to supervise the work. Mining Supervisor or Foreman or Time Mining Engineer used to supervise the workers. The affidavits filed by management witness Ram Mitra Pandey, Suresh Prasad Tiwari, Rajendra Kumar Gupta and C.B. Agrawal have also stated the workers were engaged by contractors.

18. Section 21 of Contract Labour (Regulation and Abolition) Act, 1970 provides—

"(i) A contractor shall be responsible for payment of wages to each worker employed by him as contract labour and such wages shall be paid before the expiry of such period as may be prescribed.

(ii) Every principal employer shall nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed.

(iii) It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorized representative of the principal employer.

(iv) In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor."

19. From evidence discussed above and Section 21 of the Contract Labour (Regulation and Abolition) Act, 1970 verbatim reproduced above, it is clear that that the retrenched employee shown in all the three sheets annexed with the statement of claim were employed by the contractors except the Principal employer *i.e.* IInd party was concerned only to supervise the payment of wages and in case of non-payment or short payment of wages to make it good and pay same to the contractors labours. There is no relationship of employer and employee between the IInd party CCI and the retrenched employees engaged by the contractors. For above reasons, I accordingly record my finding on Point No. 1 & 3 and Point No. 2 in Negative.

20. Point No. 4 & 5—

Issue No. 4 covers the controversy between parties whether the action of the management of CCI in retrenching the workman employed through contractors Ahuja Construction, M/s Anil Transport is without following provisions of I.D. Act. As contented in its Written Statement, IInd party has submitted that M/s Ahuja Construction and Anil Transport are not made party as per the terms of reference. The names of employees are not shown in the reference made by the Central Government. It is, therefore, submitted that in its absence, the reference cannot be decided by this Tribunal. The reference made by Central Government finds reference to the employees retrenched through Contractors M/s Ahuja Construction and M/s Anil Transport Co. the names of the employees are disclosed in the annexure submitted along with statement of claim. Ahuja Construction and Anil Transport Company are not shown parties to the dispute under reference.

21. However the evidence of the witnesses on affidavit submitted by Ist party Union is on the point that the retrenched employees were working from 1977-78 till February, 1984 through contractors. That they were not paid wages as per Cement Wage Board Award 1983. That they were doing the work of digging stones used for production of cement. When they claim wages as per Cement Wage Board Award 1983, IInd party mechanized the mines. After retrenchment they are rendered unemployed. The evidence in cross-examination of witness Manmodhi Mehtar says that Shri Ashok and Anil were last contractor when they were working. He was stopped from work in 1984, he was not given notice. He stopped from working by contractor. Ratiram in his cross-examination says that he was employed by Shri Aharaj and stopped working in 1984. The contractor used to pay his wages. He claims ignorance about his relation between the Union and the management of IInd party. Witness Dhannu Verma in his cross-examination says that he was working in Pathri Mines from 77-78. He was given to understand he was working under supervision of CCI. The contractors were changed. Last contractor was Ahuja Transport. Wages were paid to him by contractor. Contractor has not stopped work but CCI stopped him from working because the machines belonging to the company were taken back.

22. Witness Dhal Singh Sahu in his cross-examination says contractor employed at the instance of CCI. He did not recollect the name of Ist contractor. Last was Anil Transport. He was paid by CCI through supervisor of contractor. He was stopped working from February. 1984. Similar statement is given by other witnesses Khorbahara Verma, Shyamrattan Satnami and Naresh Verma. Secretary of the Union Shri S.N. Prasad in his cross-examination says

that 7 points of demands were raised before management. Contractor was given copy of demand. M/s Ahuja Construction, Anil Transportation were in the year 1982-83. He made statement on the basis of perusal of record. As per document Exhibit M-1, Anil Transport worked for development of cities meaning removal of overburden. After the machine were deployed, workman were stopped. In his further cross- examination, this witness says that he has no evidence to show that contractor had given notice that they shall make payment according to Wage Board Award 1983. The notice was displayed on notice board. He denies that distance between Pathri Mines and Factory is 11 Kms. According to him, the distance is 8 kms. That he has not maintained record except the records of workers during relevant period working with the contractors. A note is to be taken that in his cross-examination, Para-16 says that he had given details of workman in application under Section 33(C)(2) and not in this case. I will discuss the evidence of management's witnesses at later part of the judgment.

23. It would be appropriate to first discuss the documents produced on record. From evidence of management's witness Shri Parsadiram Verma, Patwari Halka No. 95, the Map Exhibit W-23 is proved. As per his evidence, distance between factory and Mandhar Mine is 10.114 Kms. In his cross-examination, he has shown the points from which he had carried the measurements. His evidence is not shattered to disbelieve his testimony. In Exhibit W-1, 2, 3 the Union had submitted demands for payment of wages as per Cement Wage Board Award 1983 to contractor M/s Ahuja Construction and Anil Transportation working in CCI Mines, Mandhar. Exhibit W-4 produced by 1st party shows the Union had submitted demand for wages. Similarly demands were submitted as per document Exhibit W-5. As per document Exhibit W-6, Anil Transport had agreed to pay the wages till 5-10-83. As per document Exhibit W-7 & W-8, the demands for payment of wages were submitted before ALC for conciliation under different letters. The demands were also submitted as per Exhibit W-9 for conciliation. Notice as per Exhibit W-10 was issued. The ALC had issued notice for conciliation Exhibit W-12,13 & 14.

24. In Exhibit W-19, there is reference that contractors informed that they were awarded contract for a fixed period of time which will be expiring on 7-2-84. However they were ready to pay all the legal dues of the workman as per rules and regulations. The failure reports in conciliation proceedings are produced at Exhibit W-20, 21.

25. Documents M-1 is the copy of Agreement Exhibit M-3 is the tendor form containing different clauses for payment of wages to the labours engaged by the contractor and liability of the employer as provided under provisions of Contract Labour (Regulation and Abolition) Act, 1970. Management has produced document Exhibit M-4 notice, copies of wage sheets are produced with Exhibit M-5. Exhibit M-7 is settlement arrived between Ahuja Contractors. It was settled to pay Rs. 71,000 towards full and final settlement. The payment was to be made within 15 days. Union agreed to withdraw the case filed under Section 33(C)(2) before this Tribunal. The pleadings and evidence of 1st party Union and evidence of all the witnesses of 1st party is silent with respect to the said settlement. Copy of Cement Wage Board Award, 1983 is produced on record finds clear refers that benefit is also extended to contract labour as per demand No. 219. The coverage area of the concerned wage board award is 10 Kms. distance as per discussion in para 73 of the Wage Board Award. As per para 50 of the award, the Wage Board has made it clear that the recommendation would apply to workers who are engaged by contractors where such employees are on construction work and purely connected with production.

26. The evidence of management witness Shri Rajendra Gupta deals with the Tripartite settlement dated 16-10-84 before ALC(C). Agreements were signed between the Union and M/s Anil Transport Company. Payment made by contractors of workman were through payment sheet Exhibit M-5, 6. Exhibit M-8 is the settlement dated 9-4-84. Exhibit M-7 is settlement between the Union and management of Anil Transport. Evidence on above point is not shattered in cross-examination. The witness in his cross-examination says that the supervisors of management was remaining present at the time of payment of wages to contract labours. Shri C.B. Agrawal management witness in his evidence also stated that the supervisor of contractor and the representative of the management used to remain present at the time of payments to the contract labour. That Parthi Mine is situated at a distance of 11 Kms. from Factory. He admits that representative of management was remaining preset at the time of payment to contract labours. In his cross-examination, he submits that distance between factory and the mine is more than 11 Kms. Their evidence is corroborated from evidence of Shri Parsadiram Verma, Patwari Halka No. 95 and the Map Exhibit W-23. From document Exhibit M-7, it is clear that the proceeding under Section 33(C)(2) for recovery of wages as per Cement Wage Board Award, 1983 were filed. The copy of judgment of proceedings under Section 33(C)(2) are not produced. During course of argument, it was given to understand that those proceedings were rejected long back. Though there is no pleading about resjudicata in this case but once the claim of the contractors was for payment of wages as per Wage Board Award was not allowed. As per settlement Exhibit M-7, the claim was settled before ALC and it was agreed to withdraw these cases. The claim of 1st party cannot be entertained. In notes of argument submitted on behalf of Union has not explained the point how their claim for wages as per Cement Wage Board Award 1983 is tenable, even after settlement Exhibit M-7 and Union, it was agreed to withdraw the cases under Section 33(C)(2). The pleadings and evidence of Union is silent with respect to the judgments in those proceedings. For the above

reasons, the claim of 1st party for wages as per Cement Wage Board Award 1983 cannot be accepted against IInd party Principal employer. The contractors M/s. Ahuja Transport and M/s. Anil Transport are not joined as parties. There is no evidence as to how much amount as per settlement Exhibit M-7 was paid or how much amount remained unpaid. The liability cannot be fastened for its payment on the Principal Employer *i.e.* IInd party.

27. With respect to the contentions of the Union that machines were employed to render contractors employees jobless, the change is alleged to be illegal. The present reference does not clearly refer to illegal change, rather the employees shown in the list annexed with statement of claim are not regular employees of the IInd party management. They are shown employees of the contractor. Section 9-A of I.D. Act provides for 21 days notice for change does not cover change with respect to the services of the labours engaged by the contractors.

28. So far as legal position with respect to employees engaged through contractor, the renewal of licence is produced on record. The liability of the Principal Employer is restricted to the points covered under Section 21(2), (4) of Contract Labour (Regulation and Abolition) Act, 1970. The employees engaged by the contractor for the work assigned under Contract cannot be said employees of the Principal Employer. Their services cannot be terminated by Principal Employer. The evidence in this case also does not show that the contractors employees shown in the list annexed with statement of claim were retrenched by the Principal Employer. M/s. Ahuja Construction and Anil Transportation are not made parties. Therefore in absence of the se-contractor, it cannot be held that the alleged retrenchment of the contractors employees is in violation of Section 25-F,G of I.D. Act. For above reasons, I record my finding on Point No. 4 & 5 in Negative.

29. In the result, award is passed as under:—

"The reference is answered in favour of the management. The claim of the 1st party Union is rejected."

R.B. PATLE, Presiding Officer

नई दिल्ली, 24 सितम्बर, 2013

का॰आ॰ 2309.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एम॰ पी॰ स्टेट माइनिंग कार्पोरेशन जिला बिलासपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 159/93) को प्रकाशित करती है जो केन्द्रीय सरकार को 23/9/2013 को प्राप्त हुआ था ।

[सं॰ एल-29012/53/92-आईआर (एम)]
जोहन तोपनो, अवर सचिव

New Delhi, the 24th September, 2013

S.O. 2309.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 159/93) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s M.P. State Mining Corporation, District (Bilaspur) and their workman, which was received by the Central Government on 23/9/2013.

[No. L-29012/53/92-IR (M)]
JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALAPUR

NO. CGIT/LC/R/159/93

Presiding Officer: SHRI R.B. PATLE

General Secretary,
M.P. Koyla Swatntra Mazdoor Sangthan,
Baradwar, PO Baradwar,
Distt. Bilaspur ....Workman/Union

Versus

Deputy General Manager (Mines),
M.P. State Mining Corporation,
Sub Office-Baradwar, PO Baradwar,
Distt. Bilaspur. ....Management

AWARD

Passed on this 23rd day of July, 2013

As per letter dated 19.8.93 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-29012/53/92-IR(Misc). The dispute under reference relates to:

"Whether the action of the management of M.P. State Mining Corporation Ltd. justified in not regularizing S/Shri Babulal Yadav, Jageshwar Singh and Har Narayan Singh as Lower Division Clerks *w.e.f.* 10.10.84"

2. After receiving reference, notices were issued to the parties. Ist party submitted Statement of claim at page 4/1 to 4/2. The case of workman is that he was appointed on post of LDC on 9.8.93. That their initial appointment was as office helper. The dates of their appointment are 29.9.75, 1.2.77, 16.12.77, they were regularized as Office Asstt. from 1.3.84 to 18.10.84, 19.10.84 in pay scale of Rs. 485-740. The workman Babulal Yadav has passed High Secondary Examination in 1975, workman Jageshwar Singh passed Higher Secondary in 1982 and workman Harnarayan

Singh passed in 1981. That as per order dated 2.3.89, they were appointed in pay scale of Rs. 870-1420. That Ist party workman No. 1 to 3 were promoted. The workman No. 2 was appointed in September 93 after long delay as LDC. It is further submitted that because of delay in his appointment, Ist party workman suffered financial loss of Rs. 51,000, 41,000 respectively. On such ground, Ist party workman prays for regularization of their service.

3. IInd party filed Written Statement at Page 13/1. It is submitted that the dispute was referred in 1993. In the year 2000, the Mining Corporation of MP was reconstituted after division of State of MP and Chhattisgarh. The Mining Corporation Chhattisgarh is not concerned with the dispute. The dispute relates to M.P. State Mining Corporation. MP Mining corporation has not filed Written Statement even after service of notice. The reference is proceeded exparte.

4. Ist Party workman 1 to 3 are claiming regularization on the post of LDC w.e.f. 10.10.84. However workman proceeded exparte on 26.8.05. No evidence is adduced by workman. The MP Mining Corporation has also filed Written Statement, no evidence is filed. Thus both parties failed to participate in the reference proceeding. Therefore both parties failed to participate in the reference proceeding therefore no dispute award needs to be passed. Accordingly the award is passed as under:—

"As parties failed to participate in reference proceeding, no dispute award is passed."

R. B. PATLE, Presiding Officer

नई दिल्ली, 24 सितम्बर, 2013

का॰आ॰ 2310.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स मैगनीज ओर इंडिया लि॰, नागपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 63/2000) प्रकाशित करती है जो केन्द्रीय सरकार को 23/9/2013 को प्राप्त हुआ था।

[सं॰ एल-27012/4/99-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 24th September, 2013

S.O. 2310.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 63/2000) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Manganese Ore India Ltd., Nagpur and their workman, which was received by the Central Government on 23.9.2013.

[No. L-27012/4/99-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/63/2000

Presiding Officer : Shri R. B. PATLE

General Secretary,
Republican Mazdoor Sangathan,
Manganese Mines, Bharveli,

Distt. Balaghat ....Workman/Union

Versus

The Chairman-cum-Managing Director,
M/s. Manganese Ore India Ltd.,
3, Mount Road Extention,
Nagpur ....Management

AWARD

Passed on this 17th day of July 2013

1. As per letter dated 6.3.2000 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under section-10 of I.D. Act, 1947 as per Notification No. L-27012/4/99-IR (Misc). The dispute under reference relates to:

"Whether the demand raised by Shri Sevakram and 20 other against the management of Manganese Ore (India) Ltd. *vide* their representation dated 17.3.99 (Annexure I) is justified? If not, to what relief the concerned workmen are entitled?"

2. After receiving reference, notices were issued to the parties. Ist party Union filed statement of claim at Page 3/1 to 3/4. The case of Ist party Union is that management issued orders dated 3.8.98 appointing certain workmen as Fieldman. Accordingly 21 members of the Union were appointed to the post of Fieldman by management of IInd party.

All those workmen were appointed on probation. During the probation period, they were working with honesty, integrity, efficiently. That considering their past service record and devotion towards duty, they were appointed by the management as Fieldman. On 14-2-99, they received intimation that their appointment as Fieldman was wrongly made. The management had reviewed their appointments and several discrepancies and mistakes were found in the matter of their appointment. Therefore their appointment as Fieldman were cancelled. All those 21 workmen were sent to their original status of piece rated workers. It was also communicated to another panel of 21 persons/workmen recommended for appointment as Fieldman. The intimation dated 14-2-99, it was noticed that

21 persons appointed on *adhoc* basis. Their order of appointment was clean. There was no condition of appointment on *adhoc* basis. The communication dated 14-2-99 did not find reference of appointment on probation as mentioned in their order of appointments. That said communication did not disclosed reasons or ground for review of their appointments. Error was committed. That all those 21 persons were appointed after following procedure following interview for selection.

3. After receiving communication dated 14-2-99, all those 21 persons submitted several representations, notice of hungerstrike was given to the authorities but without any reason. It is claimed that 21 persons have right to be appointed as Fieldman. They were appointed after following proper selection process and interview. They were not given opportunity to put up their defence prior to cancellation of their appointment as Fieldman. The management has not given reasons how the earlier selection was wrong. Once the workman were appointed on post of Fieldman following proper procedure, they worked satisfactorily. They were entitled to pay scale for the post of Fieldman. On such ground, 1st party submits that the reversion of workman from the post of Fieldman is illegal. All those 21 persons are entitled to work as Fieldman and consequential benefits of pay scale.

4. IInd party filed Written Statement. at Page 7/1 to 7/9. The claim of 1st party Union is opposed. It is submitted that MOIL is Government of India Undertaking under Ministry of Coal. It has introduced rules for Recruitment and Promotion in 1994 revised *w.e.f.* 1-8-95. New category of Fieldman was included as per the recruitment and promotion rules. 100 % vacancies of Fieldman are to be filled in through the process of recruitment form amongst the Piece Rated workers. The internal recruitment is made on the basis of selection. The details is that regard are not described in the recruitment rules: The matter was discussed with recognized Union and bipartite agreement was finalized. Regarding the marks to be followed in case of piece rated workers, Seniority= 10 marks, Educational qualification= 5 marks, performance= 10 marks, attendance for last 12 months= 15 marks and performance during interview= 15. marks were to be considered for the selection of Fieldman. It is submitted that management notified vacancies of Fieldman at Balaghat Mines. Applications were invited from piecerated workers. 552 applications were received, all of them were called for interview, selection committee was constituted. Selection Committee recommended 152 candidates for appointment as per the availability of vacancies, the first 76 candidates were appointed as fieldman in August 1998.

5. After appointment of those 76 workmen in Balaghat Mines, complaints were received from employees as well as recognized Union stating that there have been factual errors with regard to the data furnished to the Selection Committee. As a result of that, certain persons really deserving selection were omitted and certain persons who were not eligible for selection came to be selected by the Committee. The recognized Union also served strike notice on the management on 6-10-98 calling strike for fulfilling their charter of demands. One of the demand was with respect to alleged irregularity in selection of Fieldman. After receiving the strike notice, RLC, Nagpur intervened in the matter and ceased it in conciliation. The matter was discussed on 20-5-99 before RLC(C), Nagpur. The management agreed to issue written communications to all employee selected and appointed as Fieldman at Balaghat Mine. The matter was being reviewed about selection and continuation on the post of Fieldman would be subject to review. The selection committee was asked review selection and submit findings. The Committee recommended selection of only 76 candidates who had been appointed and the remaining 76 were on the Waiting List. Subsequently the management also scrapped the remaining portion of this list.

6. It is further submitted that Selection Committee reviewed all aspects of the matter, re-considered interview of all candidates based on corruptive data and submitted fresh list of candidates for the post of Fieldman. In partial modification of their earlier recommendations, the new panel recommended majority of the names from previous list, few persons from old could not find place in the new list. That after receiving the recommendations, management decided to revert Fieldman whose names do not appear in the greenlist. The employees whose names were recommended is old and new list were continued on the post of Fieldman. The management already confirmed their services whose probation period was found satisfactorily. The Fieldman whose performance was not found satisfactory during probation period was extended for six months. The 21 persons whose names were included in the 1st list did not find their name in the new list of recommendations. Those post were to be filled from internal recruitment. Out of piece rated workers, it is reiterated by management that the new list was submitted by the Conciliation Committee. The names of those 21 persons were not recommended therefore they were reverted back to the post of piece rated labour. All other contentions of workman are denied. IInd party prays for rejection of the claim of workman.

7. 1st party filed rejoinder at Page 9/1 to 9/2. It is submitted by workman that according to the bye-laws of Union, Rashtriya Mazdoor Sangh is operating in the IInd party. The demand for reference was submitted by the Republican Mazdoor Sanghan. Such Union is not existing with IInd party. All other contentions of 1st party union are reiterated. 1st party submits the record of the persons concerned with the reference, no variation was found by the Selection Committee. Mischief was committed by the Selection Committee at the time of interview. While filing statement of claim, the Union had already submitted details

of certain persons who have been selected illegally. They have been wrongly denied promotion. On such grounds, 1st party workman prayed for arrears of their claim.

8. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below :—

(i)	Whether the demand raised by Shri Sevakram and 20 others against the management of Manganese Ore (India) Ltd *vide* their representation dated 17-3-99 (annexure I) is legal?	In Affirmative
(ii)	If not, what relief the workman is entitled to?"	Relief prayed by Union is rejected.

REASONS

9. Along with letter of reference, Annexure II was received signed by 21 persons. Annexure I refers to selection of all those 21 persons by Selection Committee and appointment orders dated 16-8-98 for the post of Fieldman. That their appointment order is cancelled, other 21 persons were promoted in their place on recommendation of the Selection Committee. It is alleged to be matter of conspiracy. Their promotion right was illegally taken away.

10. Affidavit of evidence of Shri Kanhaiyalal S/o Udaylal is filed by the 1st party union. He has stated about his selection by the Committee for the post of Fieldman. The order was issued for 6 months. He was reverted to the post of Fieldman. Thereafter the order was cancelled without giving him opportunity of hearing. The persons having less educational qualification working as piecerated employee were selected as Fieldman but details of such persons are not given in his affidavit of evidence. Anexure-A is annexed with his affidavit. Name of 21 persons are shown with remarks about attendance, educational qualification, seniority but the specific information is not given about the number of working days, attendance during the 12 calendar months. In his cross-examination, above witness says that they have disclosed information in his affidavit according to his personal knowledge. He was appointed as piece rated labour. He was member of Rashtriya Manganese Ore Mazdoor Sangh (INTUC). Such Union seems to exist 4 years back. That post of Fieldman was filed by promotion from piece rated worker by Selection Committee. 76 persons were given order of appointment, rest were kept in waiting list including those 20 persons and himself. He claims ignorance about the discussion before RLC, Nagpur and office bearer of the Union. Consequently the appointment orders were cancelled. He says that he had not received any information about the review of the selection list by Committee. That after completion of six months of their promotion, the order was cancelled. As their promotion was not approved, therefore it was cancelled.

11. Affidavit of evidence is filed by Shri Raju, S/o Sakroo, Shri Neelkanth S/o Radhelal, Shri Parmanand, S/o Shri Chandulal, Shri Shersingh S/o Shivlal and Shri Foolchand S/o Shri Babulal. All the affidavit are identical to the affidavit of Shri Kanhaiyalal but those witnesses not made available for cross-examination therefore their evidence cannot be considered in the matter.

12. Management filed affidavit of evidence of Shri Nitin Pagnis, Sr. Manager MOIL Hqr. Nagpur. His affidavit is devoted to the details of the procedure followed in earlier selection. 10 marks for seniority, 5 marks for Educational qualification, 10 marks for performance, 15 marks attendance for last 12 months and 15 marks performance during interview. His affidavit also states that 152 candidates were selected by the Committee, 76 post of Fieldman were filled. There was waiting list of 76 candidates. After the appointment, several complaints were received. Union had given strike notice and selection committee committed illegalities and selected the candidates for the post of Fieldman. The names of all 21 workers were not appearing in the new list therefore they were reverted back to the post of fieldman. The evidence of management witness remained unchallenged. He was not cross-examined by Union. I donot find reason to disbelieve the facts stated in affidavit. When strike notice was given as per discussion before RLC, Nagpur, the selection list was reviewed, interview were held IInd time , 21 persons participated in the said interview but they were not selected considering the factors of selection. The grievance of the applicant cannot be said proper. They participated in the IInd selection process, they got opportunity for selection IInd time. Their grievance only after not found selected in the IInd list is not acceptable. For above reasons, I hold that demand of 1st party is not legal. Accordingly I record my finding in Point No. l.

13. In the result, award is passed as under:—

1. The demand for promotion raised by Shri Sevakram and 20 others against the management of Manganese Ore (India) Ltd. *vide* their representation dated 17-3-99 (Annexure I) is not legal.

2. Relief prayed by Union is rejected.

R. B. PATLE, Presiding Officer

नई दिल्ली, 24 सितम्बर, 2013

का॰आ॰ 2311.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स मैगनीज ओर इंडिया लि॰, जिला भंडारा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय

सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 35/2008) प्रकाशित करती है जो केन्द्रीय सरकार को 23/9/2013 को प्राप्त हुआ था।

[सं॰ एल-27012/1/2008-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 24th September, 2013

S.O. 2311.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 35/2008) of the Central Government Industrial Tribunal/Labour Court, Nagpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Magnese Ore (India) Ltd., Distt. Bhandara and their workman, which was received by the Central Government on 23.09.2013.

[No. L-27012/1/2008-IR (M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/35/2008 Date: 13.08.2013

Party No. 1 : The Mines Manager,
Manganese Ore (India) Ltd.,
Chikla Mine, Tahsil Tumsar,
Distt. Bhandara.

Party No. 2 : Shri Hanslal Warade
Driver, Chikla Mine, Post:
Chikla, Tahsil-Tumsar,
Distt. Bhandara. (Dead)

Applicants : (1) Ramdayal S/o. Hanslal Warade
Aged about 21 Years, Occ-Presently Nil,
(2). Smt. Sunita W/o Hanslal Warade
Aged about 42 years, Occ-Household
Both residents of Chikhala Mines,
PO: Chikhala, Tumsar, Distt. Bhandara.

AWARD

(Dated: 13th August, 2013)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of MOIL and their workman, Shri Hanslal Warade, for adjudication, as per letter No. L-27012/1/2008-IR (M) dated 22.09.2008, with the following schedule:—

> "Whether the action of the management of the Manganese Ore (I) Ltd., Chikla Mine in dismissing Shri Hanslal Sumratlal Warade, an Ex-workman of Chikla Mine from service is legal and justified? If not, to what relief is the workman is entitled?"

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the applicants, who are the legal heirs of the deceased workman, Shri Hanslal Warade, ("the applicants" in short) filed the statement of claim and the management of MOIL, ("party no. 1" in short) filed the written statement.

The case of the applicants (the legal heirs of the deceased workman, Hanslal Sumratlal Warade) is that deceased workman was in the employment of party no. 1 at Chikhla Mines as a driver *w.e.f.* 12.04.1975 and a charge sheet dated 11.05.2006 was issued by the party no. 1 levelling various false charges against him and the deceased workman submitted his reply to the said charge sheet, but party no. 1 was not satisfied with his reply and initiated the departmental proceedings against him and after conducting the departmental enquiry, the deceased workman was dismissed from services *w.e.f.* 14.01.2007 and the deceased workman raised the Industrial dispute before the Asstt. Labour Commissioner (C), Nagpur and due to failure of the conciliation, failure report was submitted to the Central Government and the Central Government in its turn referred the dispute to the Tribunal for adjudication, but before filing of the statement of claim by the deceased workman challenging his illegal dismissal from service dated 14.01.2007, he died on 19.01.2009 and as such, the statement of claim has been filed by them, as the wife and son of the deceased workman. The further case of the applicants is that charge sheet dated 11.05.2006 was submitted against the deceased workman for commission of the alleged theft of steel plate carried by him in the explosive van and when the security guard at the gate asked him about the said steel plate, he replied to have been carrying the same to the workshop for welding and he did not bring back the steel plate and handed over the explosive van to one Shri Omprakash Devisingh, Driver at about 12 PM and such action of the deceased workman amounted to misconduct under clauses 29 (b) (3) (9) (10) of the certified standing order of party No. 1 and the deceased workman in his reply, denied the charges levelled against him and infact, the deceased workman did not take any steel plate to outside the plant to the workshop and according to the procedure, in case of taking anything outside of the plant, it is necessary to prepare a gate pass

for the same and without the gate pass, nothing can be taken out of the plant and the security guard uses to check the vehicles and without gate pass, he does not allow anything to be taken out of the security gate and it is clear that no gate pass was prepared for the steel plate and as such, it could not have been taken out from the main gate. It is further pleaded by the applicants that, not admitting, but assuming that the deceased workman might have taken the steel plate, then at the first place, the Party No. 1 should have lodged a report at the police station and secondly, the steel plate should have been recovered from the possession of the deceased workman, but neither any police complaint was against the deceased workman not there was recovery of the steel plate from his possession and such facts clearly indicate that no steel plate was stolen by the deceased workman and false charges were levelled against him and therefore, the issuance of the charge sheet against the workman was with malafide intention and to implicate him for the false charge of theft and the deceased workman in his reply had categorically mentioned that the officers of Party No. 1 were compelling him to carry their house hold articles in the explosive van and whenever, he was objecting or denying to carry the materials, he was being threatedned of termination of his services by the said officers.

The further case of the applicants is that the departmental enquiry was conducted by the enquiry officer in a very strange manner and the copy of the enquiry proceedings was not supplied to the workman during the course of the enquiry and such fact was brought to the notice of the diciplinary authority and non-supply of the copy of the proeedings was in violation of the principles of natural justice and the enquiry officer acted as a prosecutor and he himself asked questions to the deceased workman and deceased workman was not given proper opportunity to defend his case and the enquiry officer without explaining the procedure of the enquiry, conducted the enquiry as per his whims and the enquiry officer was biased and his findings were perverse and the enquiry officer held the charges to have been proved without any justification and basing on such perverse and baseless findings, the workman was dismissed from services and as such, the order of dismissal is liable to be set aside, the same being illegal and contrary to the provisions of laws.

The further case of the applicants is that the charge sheet was issued by the Manager of Chikla Mines under his signature and the dismissal order was also singned by him as the Disciplinary Authority and below the signature of the Manager, the Deputy General Manager also signed the dismissal order and in the dismissal order dated 14.01.2007, it was mentioned that the said authority will decide the appeal preferred by the deceased workman and the Party No. 1 in colorable exercise of power acted as dictator to victimize the workman and the entire procedure adopted by Party No. 1 was illegal and the dismissal order was not served on the deceased workman and the Sr. Personnel Manager, Shri Pagnis and the then C.M.O., Shri Kishanlal Mehrotra with hand in gloves put the false signature of the deceased workman and submitted the same before the ALC (C), Nagpur in conciliation proceeding and the deceased workman had challenged the same and though the deceased workman had preferred an appeal to the appellate authority, in reply to the same, the appellate authority raised new allegation of selling liquor by him in the residential quarter allotted to him by the company, which allegation was not included in the charge sheet and the said fact clearly indicates that the Party No. 1 was bent upon to dismiss the services of the deceased workman.

The applicant have prayed to answer the reference in their favour and to give them monetary benefits from the date of the illegal dismissal of the deceased workman till his death and consequential benefits and to give compassionate appointment to applicant No. 1.

3. The Party No. 1 in their written statement have pleaded *inter-alia* that the service record of the deceased workman was not clean and excellent and the workman had been charge sheeted earlier, for the misconduct of theft of diesel and punishment of suspension of four days with loss of wages under the certified standing order of the company had been imposed against him, after conducting of departmental enquiry and the deceased workman on 29.04.2006 at about 2. P.M. took one old jaw plate from the crushing plant in the explosive van, which he was driving, with an intention of welding of the plate in the workshop, without any instruction from any of the competent authorities and the plate was taken by the workman to outside of Chikla Mine instead of to the workshop and his such action amounted to misconduct under the certified standing order, so he was charge sheeted under clause 29 B (iii) (ix) (x) of the Standing Order on 11.05.2006 and as the reply submitted by the deceased workman on 22.05.2006 was found to be unsatisfactory, it was decided by the Disciplinary Authority, the Mines Manager, Chikla Mine to conduct the departmental enquiry and the disciplinary authority appointed Shri S.K. Biswas as the enquiry officer on 15/06/2006, to conduct the departmental enquiry and the enquiry officer conducted the enquiry as per the procedure laid down in the certified standing order, by offering proper opportunity of hearing to the deceased workman and by following the principles of natural justice and the deceased workman participated in the enquiry and he denied the suggestion of the enquiry officer to take assistance of any co-worker or office bearer of a registered union, stating to conduct his own case himself and he cross-examined the three witnesses produced by them and the deceased workman did not produce any witness and gave his statement only and after completion of the enquiry, the enquiry officer submitted the enquiry report holding the charges to have been proved against the deceased workman and the disciplinary authority issued the second

show cause notice alongwith the copy of the enquiry report to the deceased workman, vide letter dated 24.12.2006, in respect of the proposed punishment and the deceased workman submitted his reply to the 2nd show cause notice on 01.01.2007 and as the reply was found to be not satisfactory, the disciplinary authority decided to impose the punishment of dismissal from services and accordingly *vide* order dated 14.01.2007, the workman was dismissed from services with immediate effect. The further case of Party No. 1 is that no gate pass is necessary for movement/ transportation of material within the mine area and such gate pass is required only when any material is taken out from the mines area and the deceased workman took the plate from the crushing plant without any official instruction from any authority and instead of taking the same to the Mechanical workshop, he took the same outside the mines area for the purpose of theft and the misconduct of theft was proved against the deceased workman and the allegations of threat given by officials to terminate the services of the deceased workman are unfounded and after thought and copy of the enquiry proceedings was handed over to the workman and the same was duly acknowledged by him and the workman did not produce any witness in the enquiry even thought opportunity was given to him for the same and the enquiry officer did not conduct the enquiry as per his whims and in a biased manner and such allegations are false and the Mines Manager, Chikla Mine being the disciplinary authority under the certified standing order had rightly issued the charge sheet and signed the order of dismissal and the Agent and Deputy General Manager, Group of the Mine is an appellate authority and the allegations made in this regard are not true and the dismissal order was duly served on the deceased workman and the appeal preferred by him on 12.02.2007 against the penalty of dismissal before the Agent and DGM, Group of Mines came to be rejected by a reasoned order. The further case of the Party No. 1 is that mere non-filing of the police complaint does not lead to the conclusion that the deceased workman was falsely implicated and the statment of claim does not point out any material to show perversity of findings and the appellate authority in the order did not raise any new allegation of selling liquor as pointed out, but it was in respect of the past conduct of the deceased workman, which was taken account of by the appellate authority and there is no illegality in dismissing the workman from services, as the charges of theft levelled against him were proved in the departmental enquiry and they lost faith in the deceased workman and the applicants are not entitled to any relief.

4. In the rejoinder, the facts mentioned in the statement of claim are reiterated.

5. It is necessary to mention here that as this is a case of dismissal of the deceased workman from services after holding of a departmental enquiry, the legality or otherwise of the departmental enquiry was taken up for consideration as a preliminary issue and by order dated 01.02.2013, the departmental enquiry conducted against the deceased workman was held to be legal, proper and in accordance with the principles of natural justice.

6. At the time of argument, it was submitted by the learned advocate for the applicants that false charge of theft of a steel plate had been levelled against the workman and the evidence adduced in the departmental enquiry was inconsistent, untrustworthy and discrepant and the same was insufficient to hold the workman guilty of the charge and as such, the findings of the Enquiry Officer were totally perverse and the punishment of dismissal imposed against the workman was highly disproportionate and illegal and as such the workman was entitled to be reinstated in service and as the workman died on 19.01.2009, the applicants, who are his legal heirs are entitled for monetary benefits with all consequential benefits till the date of death of the workman.

7. Per contra, it was submitted by the learned advocate for the Party No.1 that by order dated 01.02.2013, the departmental enquiry held against the deceased workman has already been held to be legal, proper and in accordance with the principles of natural justice and for commission of misconduct of theft of an old jaw plate from the CS plant charge sheet under the certified standing order was submitted against the workman and the report of the enquiry officer was based on the evidence adduced in the enquiry and was not based on any extraneous materials and as such, the findings cannot be said to be perverse and the disciplinary authority while imposing the punishment had taken the past service records of the deceased workman and the punishment imposed against the workman was justified and the same was legal and proper and the same cannot be said to be shockingly disproportionate to the grave misconduct committed by the workman and the reference is to be answered in favour of Party No. 1.

8. It is to be mentioned here that most of the submissions made by the learned advocate for the workman have already been considered at of deciding of the preliminary issue of the validity of the departmental enquiry, so there is no question of consideration of such submissions again.

9. At this juncture, I think it apropos to mention the principles settled by the Hon'ble Apex court in a string of decisions regarding the jurisdiction and power of the Tribunal in regard to interference with the findings and punishment in a departmental enquiry.

It is well settled by the Hon'ble Apex Court that:-

"The jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the enquiry officer or competent authority where they are not arbitrary or utterly perverse. The power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Art. 309 of the Constitution. If there has been an enquiry consistent with the rules and

in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is mala fide is certainly not a matter for the Tribunal to concern itself with. The Tribunal also cannot interfere with the penalty if the conclusion of the enquiry officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."

It is also settled by the Hon'ble Apex Court that:-

"A review of the above legal position would establish that the disciplinary authority and on appeal, the appellate authority, being fact finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the' conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

It is also well settled by Hon'ble Apex Court that:-

In departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/and jurisdiction to re-appreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since the High Court does not sit as an appellate authority over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot, normally speaking, substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the disciplinary or the departmental appellate authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty. Both the learned Single Judge and the Division Bench of the High Court, it appears, ignored the well-settled principle that even though judicial review of administrative action must remain flexible and its dimension not closed, yet the Court, in exercise of the power of judicial review, is not concerned with the correctness of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision-making process."

10. Keeping in view the above settled principles, now, the case in hand is to be considered.

After perusing the materials on record including the papers of the departmental enquiry and taking into consideration the submissions made by the learned advocates for the parties, it is found that the enquiry officer has arrived at the conclusions by analyzing the evidence adduced in the departmental proceeding systematically and so also in a rational manner. The findings of the enquiry officer are based on the materials on record of the enquiry proceedings and not on any extraneous consideration. It is also found that this is not a case of no evidence or that the findings of the enquiry officer are based on no evidence. The findings of the enquiry officer are not as such, which could not have been reached by a prudent man on the materials available on record. Hence, the findings of the enquiry officer cannot be said to be perverse.

11. So far the proportionality of the punishment is concerned; in this case, grave misconduct of theft has been proved against the workman in a properly conducted departmental enquiry. As the punishment imposed against the workman is not shockingly disproportionate to the grave misconducts proved against him in a properly conducted departmental enquiry, there is no scope to interfere with the same. Hence, it is ordered:-

ORDER

The action of the management of the Manganese Ore (I) Ltd., Chikla Mine in dismissing Shri Hanslal Sumratlal Warade, an Ex- workman of Chikla Mine from service is legal and justified. As the workman was not entitled to any relief, the applicants, who are his legal heirs are not entitled to any relief.

J.P. CHAND, Presiding Officer

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